

MANUSCRIPT OF ALASKA

SUPREME COURT OF THE UNITED STATES

REPORTS OF THE SUPREME COURT OF THE UNITED STATES

No. 1000

ALASKA SALMON COMPANY, PLAINTIFF IN ERROR

THE TERRITORY OF ALASKA

REPORTS OF THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

THE TERRITORY OF ALASKA

(24, 254)

(25,826)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 996.

ALASKA SALMON COMPANY, PLAINTIFF IN ERROR,

vs.

THE TERRITORY OF ALASKA.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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No. 2720

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

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**Transcript of Record.**

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Upon Writ of Error to and Upon Appeal from the United States  
District Court of the District of Alaska,  
Division No. 1.

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**Names and Addresses of Attorneys.**

Z. R. CHENEY, Juneau, Alaska,  
Attorney for Plaintiff in Error.

J. H. COBB, Juneau, Alaska,  
Attorney for Defendant in Error. [1\*]

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*In the District Court for the Territory of Alaska,  
Division Number One. at Juneau.*

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

**Defendant's Request for Conclusions of Law and  
Judgment.**

Upon the agreed statement of facts filed herein by the parties to this suit, which said statement the Court adopts its findings of fact, the Court doth conclude as a matter of law:

**Conclusion No. One.**

That sections six and nine of the act of April 29, 1915, under which this suit is prosecuted, are void and invalid for the reasons:

(A) That the sections of said act above mentioned alter, modify and repeal the act of June 26, 1906, which said act of June 26, 1906, is set forth in paragraph VI of the agreed statement of facts;

(B) Because under the act of August 24, 1912, which said act is set forth in paragraph IV of the

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\*Page-number appearing at foot of page of original certified Record.

agreed statement of facts, the legislative assembly in the Territory of Alaska is prohibited from passing any laws relating to fish or fisheries in the Territory of Alaska;

(C) Because no assessment whatsoever was made upon the property of defendant, taxed under the act of April 29, 1915, prior [1a] to the levying of the tax.

Refused. R. W. J.

Conclusion No. Two.

The defendant company is not liable for any license taxes for the years 1913-1914, for the reason that the act of May 1, 1913, designated as House Bill No. 96, did not provide for any civil liability.

Refused. R. W. J.

Conclusion No. Three.

That the defendant, Alaska Salmon Company, having complied with all the conditions and paid the license fees imposed by the said acts of Congress, is not required to apply for a license and pay the license fees and taxes imposed by the act of the legislature of Alaska, approved May 1, 1913.

Refused. R. W. J.

Conclusion No. Four.

That the defendant, Alaska Salmon Company, having complied with all the conditions and paid the license fees imposed by the said acts of Congress, is not required to apply for a license and pay the license fees and taxes imposed by the act of the Alaska legislature, approved April 29, 1915.

Refused. R. W. J.

Conclusion No. Five.

That the owners of private salmon hatcheries in Alaska, who are also engaged in the business of canning salmon in Alaska, are by virtue of certificates issued to them by the Secretary of Commerce and Labor for salmon fry liberated from their said hatcheries, entitled, by virtue of such certificates, to have the same applied *pro tanto*, in payment of all license fees and [2] charges, not only imposed by the said acts of Congress, but also by said acts of the legislature of Alaska.

Refused. R. W. J.

Conclusion No. Six.

Upon the agreed statement of facts, the Court doth find that the plaintiff is not entitled to any relief in this action, and that defendant is entitled to its costs and disbursements herein expended.

Refused. R. W. J.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska,  
First Division. Dec. 15, 1915. J. W. Bell, Clerk.  
By ———, Deputy. [3]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

No. 1407—A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

### **Judgment.**

This cause came on regularly to be heard upon the agreed statement of facts filed herein and was submitted to the Court under the provisions of chapter 28 of the Code of Civil Procedure of the district of Alaska, Mr. J. H. Cobb appearing for the plaintiff, and Mr. Z. R. Cheney for defendant. And the Court having heard said agreed statement of facts and fully considered the same, the Court concludes as a matter of law:

#### **I.**

That compliance with all the conditions and the payment of the license fees imposed by the acts of Congress set forth in the agreed statement, does not relieve the defendant from the payment of the license taxes imposed by the act of the Alaska legislature approved May 1st, 1913, but that the defendant was obliged to apply for a license and pay the license fees and taxes so imposed.

#### **II.**

That the defendant having complied with all the conditions and paid the license fees imposed by the acts of Congress in said agreed statement set forth, is obliged to apply for a license and pay the license fees and taxes imposed by the act of the legislature of Alaska [4] known as House Bill No. 109 approved April 29th, 1915.

IT IS THEREFORE CONSIDERED BY THE COURT, and so ordered and adjudged that the plaintiff, the Territory of Alaska do have and recover of and from the defendant the Alaska Salmon Company for the taxes for the year 1915, the amount set

forth in the tenth paragraph of said agreed statement, to wit: Twelve Hundred and Ninety and 03/100 Dollars (\$1,290.03) with interest thereon at the rate of eight per cent per annum from and after January 15th, 1916.

IT IS FURTHER CONSIDERED BY THE COURT and so ordered and adjudged that the plaintiff, the Territory of Alaska, do have and recover of and from the defendant, the Alaska Salmon Company, a corporation, for taxes for the years 1913 and 1914, the sum of Four Thousand Six Hundred and Forty-three and 60/100 Dollars (\$4,643.60) being the amount set forth in paragraph four of said statement, as the second cause of action, together with interest thereon from the date hereof at the rate of eight per cent per annum.

AND IT IS FURTHER CONSIDERED BY THE COURT and so ordered and adjudged that the plaintiff do have and recover of the defendant its costs herein to be taxed by the clerk, and execution may issue for all said amounts so recovered.

Done in open court this the 22d day of December, 1915.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska,  
First Division, Dec. 14, 1915. J. W. Bell, Clerk.  
By ———, Deputy. [5]

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1074—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

**Assignment of Errors.**

Comes now the Alaska Salmon Company, defendant above named and plaintiff in error, by its attorney, Z. R. Cheney, and assigns the following errors committed by the Court in adopting its conclusions of law, and in the rendition of the judgment in this cause, upon which errors it will rely in the Appellate Court:

**Assignment of Error No. One.**

The Court erred in refusing to adopt defendant's requested conclusion of law number one, reading as follows:

That sections six and nine of the act of April 29, 1915, under which this suit is prosecuted, are void and invalid for the reasons:

(A) That the sections of said act above mentioned alter, modify, and repeal the act of June 26, 1906, which said act of June 26, 1906, is set forth in paragraph VI of the agreed statement of facts;

(B) Because under the act of August 24, 1912, which said act is set forth in paragraph IV of the agreed statement of facts, the legislative assembly in

the territory of Alaska is prohibited from passing any laws relating to fish or fisheries in the Territory of Alaska; [6]

(C) Because no assessment whatsoever was made upon the property of defendant, taxed under the act of April 29, 1915, prior to the levying of the tax.

Assignment of Error No. Two.

The Court erred in refusing to adopt defendant's requested conclusion of law number two, reading as follows:

The defendant company is not liable for any license taxes for the years 1913-1914, for the reason that the act of May 1, 1913, designated as House Bill No. 96, did not provide for any civil liability.

Assignment of Error No. Three.

The Court erred in refusing to adopt defendant's requested conclusion of law number three, reading as follows:

That the defendant, Alaska Salmon Company, having complied with all the conditions and paid the license fees imposed by the said acts of Congress, is not required to apply for a license and pay the license fees and taxes imposed by the act of the legislature of Alaska, approved May 1, 1913.

Assignment of Error No. Four.

The Court erred in refusing to adopt defendant's requested conclusion of law number four, reading as follows:

That the defendant, Alaska Salmon Company, having complied with all the conditions and paid the license fees imposed by the said acts of Congress, is not required to apply for a license and pay the license

fees and taxes imposed by the act of the Alaska legislature, approved April 29, 1915. [7]

Assignment of Error No. Five.

The Court erred in refusing to adopt defendant's requested conclusion of law number five, reading as follows:

That the owners of private salmon hatcheries in Alaska, who are also engaged in the business of canning salmon in Alaska, are by virtue of certificates issued to them by the Secretary of Commerce and Labor for salmon fry liberated from their said hatcheries, entitled, by virtue of such certificates, to have the same applied *pro tanto*, in payment of all license fees and charges, not only imposed by the said acts of Congress, but also by said acts of the legislature of Alaska.

Assignment of Error No. Six.

The Court erred in refusing to adopt defendant's requested conclusion of law number six, reading as follows:

Upon the agreed statement of facts, the Court doth find that the plaintiff is not entitled to any relief in this action, and that defendant is entitled to its costs and disbursements herein expended.

Assignment of Error No. Seven.

The Court erred in adopting conclusion of law number one, reading as follows:

That compliance with all the conditions and the payment of the license fees imposed by the acts of Congress set forth in the agreed statement, does not relieve the defendant from the payment of the license taxes imposed by the act of the Alaska legislature

approved May 1st, 1913, but that the defendant was obliged to apply for a license and pay the license fees and taxes so imposed. [8]

Assignment of Error No. Eight.

The Court erred in adopting conclusion of law number Two, reading as follows:

That the defendant having complied with all the conditions and paid the license fees imposed by the acts of Congress in said agreed statement set forth, is obliged to apply for a license and pay the license fees and taxes imposed by the act of the legislature of Alaska known as House Bill No. 109 approved April 29th, 1915.

Assignment of Error No. Nine.

The Court erred in rendering and entering judgment for the plaintiff, reading as follows:

IT IS THEREFORE CONSIDERED BY THE COURT, and so ordered and adjudged that the plaintiff, the Territory of Alaska do have and recover of and from the defendant the Alaska Salmon Company for the taxes for the year 1915 the amount set forth in the tenth paragraph of said agreed statement, to wit: Twelve Hundred and Ninety and 03/100 Dollars (\$1,290.03) with interest thereon at the rate of eight per cent per annum from and after January 15th, 1915.

IT IS FURTHER CONSIDERED BY THE COURT and so ordered and adjudged that the plaintiff, the Territory of Alaska, do have and recover of and from the defendant, the Alaska Salmon Company, a corporation, for taxes for the years 1913 and 1914, the sum of Four Thousand Six Hundred and

Forty-three and 60/100 Dollars (\$4,643.60) being the amount set forth in paragraph four of said statement, as the second cause of action, together with interest thereon from the date hereof at the rate of eight per cent per annum. [9]

AND IT IS FURTHER CONSIDERED BY THE COURT and so ordered and adjudged that the plaintiff do have and recover of the defendant its costs herein to be taxed by the clerk, and execution may issue for all said amounts so recovered.

Done in open court this the 22 day of December, 1915.

ROBERT W. JENNINGS,

Judge.

And for the said errors and others manifest of record herein, defendant and plaintiff in error prays that the said judgment be reversed and judgment be given for defendant and plaintiff in error, and for such other orders as to the Court may seem meet and proper in the premises.

Z. R. CHENEY,

Attorney for Alaska Salmon Company, Defendant  
and Plaintiff in Error.

Filed in the District Court, District of Alaska,  
First Division. Dec. 23, 1915. J. W. Bell, Clerk.  
By ———, Deputy. [10]

COPY.

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1407—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

**Petition for Appeal.**

The Alaska Salmon Company, defendant and appellant in the above-entitled cause, conceiving itself aggrieved by the judgment and decree made and entered on the 22d day of December, 1915, in the above-entitled cause, does hereby appeal from said judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, and prays this its appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said judgment and decree were made and based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, to the end that said judgment and decree may be reversed or modified, and speedy justice done in the premises.

Z. R. CHENEY,

Attorney for Alaska Salmon Company, Defendant  
and Appellant.

Filed in the District Court, District of Alaska,

First Division, Dec. 23, 1915. J. W. Bell, Clerk.

By ———, Deputy. [11]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1407—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

**Order Allowing Appeal and Fixing Amount of Bond.**

This matter coming on to be heard in open court this 23 day of December, 1915, upon the petition of the defendant and appellant for an order allowing an appeal in the above-entitled cause, defendant and appellant being represented by its attorney, Z. R. Cheney, and it appearing to the Court that the petitioner has made and duly filed its assignment of errors herein, and said petition being in due form, it is ordered that the appeal herein be and the same is allowed as prayed for.

It is further ordered that the defendant and appellant file a bond on appeal in the sum of Six Thousand Dollars (\$6,000.00), such bond, when taken and approved, to operate as a supersedeas from and after the date of its filing.

Done in open court this 23d day of December, 1915.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska,  
First Division Dec. 23, 1915. J. W. Bell, Clerk. By  
——— Deputy. [12]

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COPY.

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1407—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

**Petition for Writ of Error.**

The Alaska Salmon Company, defendant in the above-entitled cause, feeling itself aggrieved by the conclusions of law adopted by the Court and by the judgment entered against the defendant on the 22d day of December, 1915, in the above-entitled cause, comes now by its attorney, Z. R. Cheney, and petitions said Court for an order allowing the defendant to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security, all further proceedings in this court be suspended and stayed until the determination of

said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

Z. R. CHENEY,  
Attorney for defendant.

Filed in the District Court, District of Adaska,  
First Division, Dec. 23, 1915. J. W. Bell, Clerk.  
By ———, Deputy. [13]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1407—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

**Order Allowing Writ of Error, and Fixing Amount  
of Supersedeas Bond.**

At a stated time, to wit, on the 23 day of December, 1915, at a regular session of the District Court, held in the courtroom, in the city of Juneau, in said Territory, on said day. Present: The Honorable ROBERT W. JENNINGS, District Judge.

Upon motion of Z. R. Cheney, attorney for defendant, based upon petition for writ of error and an assignment of errors heretofore duly filed herein, it is ordered that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judg-

ment heretofore entered herein and herein filed on the 22d day of December, 1915.

It is further ordered that the defendant file a bond in the sum of Six Thousand Dollars (\$6,000.00) such bond, when taken and approved by this Court and filed herein, to operate as a supersedeas from and after the date of such filing.

Done in open court this 23d day of December, 1915.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska, First Division, Dec. 23, 1915. J. W. Bell, Clerk.  
By —————, Deputy. [14]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1407—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

**Writ of Error.**

United States of America,—ss.

The President of the United States of America to  
the Honorable Judge of the District Court for  
the Territory of Alaska, Division Number One:  
Greeting:

Because, in the record and proceedings, as also in  
the rendition of the judgment of a plea which is in

the District Court before you between the Territory of Alaska, plaintiff, vs. Alaska Salmon Company, defendant, wherein was drawn in question the validity of certain statutes of the Territory of Alaska, being chapter 52 of the Session Laws of Alaska of 1913, approved May 1, 1913, and chapter 76 of the Session Laws of Alaska of 1915, approved April 29, 1915, and wherein the decision was in favor of the validity of said acts, a manifest error hath happened to the great prejudice and damage of the said defendant, Alaska Salmon Company, as is said and appears by the petition herein;

Now, Therefore, we being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, together with this writ, [15] so as to have the same at the said place in said circuit on or before thirty days, from the date hereof, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors, which of right and according to the laws and customs of the United States should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court

of the United States, this 23 day of December, 1915.

I attest my hand and the seal of the District Court for Alaska, Division Number One, at the Clerk's office at Juneau, Alaska, on the day and year last above written.

[Seal]

J. W. BELL,

Clerk of the District Court for the Territory of Alaska.

By \_\_\_\_\_,

Deputy.

Allowed this 23 day of December, 1915.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska, First Division, Dec. 23, 1915. J. W. Bell, Clerk.  
By \_\_\_\_\_, Deputy. [16]

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1407—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

**Citation on Writ of Error.**

United States of America,—ss.

The President of the United States to the Territory of Alaska, Plaintiff, and to J. H. Cobb, its Chief Counsel, Greeting:

You are hereby cited and admonished to be and ap-

pear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the District Court for Alaska, Division Number One, wherein the Alaska Salmon Company is plaintiff, and you are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 23d day of December, 1915, and of the independence of the United States the one hundred and thirty-ninth.

ROBERT W. JENNINGS,

Judge.

Copy received and service accepted, this 23d day of December, 1915.

J. H. COBB,

Chief Counsel for the Territory of Alaska.

Filed in the District Court, District of Alaska, First Division, Dec. 23, 1915. J. W. Bell, Clerk.  
By L. E. Spray, Deputy. [17]

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

**Stipulation [That Defendant may File Supersedeas  
Bond on Appeal Within 40 Days from Dec. 22,  
1915, etc.].**

It is hereby stipulated and agreed between J. H. Cobb, Chief Counsel for the Territory of Alaska, plaintiff, and Z. R. Cheney, attorney for defendant, that the defendant may file in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, at any time, within forty days from this date, a supersedeas bond on appeal, in the sum of Six Thousand Dollars (\$6,000) in pursuance of the order of Robert W. Jennings, Judge of the District Court for the Territory of Alaska, Division Number One, which said order was made and filed in said District Court on the 23d day of December, 1915; that in the meantime and until the filing of such bond, all proceedings on the part of the plaintiff under the judgment made and entered in this cause on the 22d day of December, 1915, be stayed.

J. H. COBB,

Attorney for Plaintiff.

Z. R. CHENEY,

Attorney for Defendant.

Filed in the District Court, District of Alaska,  
First Division, Dec. 23, 1915. J. W. Bell, Clerk.  
By ———, Deputy. [18]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1407—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

**Defendant's Bill of Exceptions.**

BE IT REMEMBERED, that the above-entitled cause came on for trial, before Honorable Robert W. Jennings, Judge of the above-entitled court, on December 14, 1915, plaintiff being represented by Mr. J. H. Cobb, Chief Counsel for the Territory of Alaska, and defendant being represented by its attorney, Mr. Z. R. Cheney. The cause was submitted upon an agreed statement of facts filed by the parties pursuant to the provisions of chapter 28 of the Code of Civil Procedure for the District of Alaska, which statement of facts is in words and figures as follows, to wit: [19]

*In the United States District Court, Territory of  
Alaska, First Division.*

No. 1407—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

**Agreed Statement of Facts and Stipulation to Submit a Controversy Without Action.**

Whereas a question in controversy has arisen between the Territory of Alaska, plaintiff, and the Alaska Salmon Company, defendant, as to the necessity of the defendant making application for, and obtaining, a license to prosecute the business of operating a salmon cannery in the Territory of Alaska, for maintaining fish-traps and using gill-nets, and paying for said licenses the amounts hereinafter stated, which question in controversy might become the subject of an action or actions in the courts of the District of Alaska, and the parties hereto have agreed to submit the same to the determination of the Court without action, under the provisions of chapter 28 of the Code of Civil Procedure of the District of Alaska, and have agreed to the following statement of facts upon which the said controversy shall be submitted to this court. [20]

I.

That the defendant is, and ever since the 14th day of November, 1900, has been, a corporation duly incorporated, organized and existing under and by

virtue of the laws of the State of California, and, with the exception of the year 1909, has ever since the year 1901 been engaged in the business of annually operating a salmon cannery situate on the Nushagak River, in the District of Alaska, and manufacturing canned salmon thereat.

## II.

That the said defendant, during the year 1915, also packed at its said cannery in Alaska, the following cases of salmon, to wit:

Of King and Red salmon . . . . . 27,669 Cases

Of Medium Red salmon . . . . . 616 Cases

Of all other salmon . . . . . 3,920 Cases

That the amount in controversy herein exceeds the sum of Five Hundred (500) Dollars in United States Gold Coin.

## III.

That the said defendant, during the year 1915, also maintained and operated at its said cannery at Alaska gill-nets, aggregating 13,175 fathoms in length.

## IV.

That on the 24th day of August, 1912, the Congress of the United States duly enacted a law for the creation of a legislative assembly for the Territory of Alaska, which law is hereinafter referred to as the Organic Act, and is as follows, to wit: [21]

“An Act to Create a Legislative Assembly in the Territory of Alaska, to Confer Legislative Power Thereon, and for Other Purposes.

( Act of August 24, 1912, ch. 387.)

Sec. 1. Alaska Territory organized.—That the

territory ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, and known as Alaska, shall be and constitute the Territory of Alaska under the laws of the United States, the government of which shall be organized and administered as provided by said laws.

Sec. 2. Capital at Juneau.—That the capital of the Territory of Alaska shall be at the city of Juneau, Alaska, and the seat of government shall be maintained there.

Sec. 3. Constitution and laws of United States extended.—That the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States; that all the laws of the United States heretofore passed establishing the executive and judicial departments in Alaska shall continue in full force and effect until amended or repealed by Act of Congress; that except as herein provided all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the Legislature; Provided, That the authority herein granted to the legislature to alter, amend, modify, and repeal laws in force in Alaska shall not extend to the customs, internal-revenue, postal, or other general laws of the United States or to the game, fish, and fur-seal laws and laws relating to fur-bearing animals of the United States applicable to Alaska, or to the laws of the United States providing for taxes on business and trade, or to the Act entitled 'An Act to provide for the construction and mainten-

ance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska, and for other purposes,' approved January twenty-seventh, nineteen hundred and five, and the several Acts amendatory thereof: Provided further, that this provision shall not operate to prevent the legislature from imposing other and additional taxes and licenses. And the legislature shall pass no law depriving the judges and officers of the District Court of Alaska of any authority, jurisdiction, or function exercised by like judges or officers of District Courts of the United States.

Sec. 4. The legislature.—That the legislative power and authority of said Territory shall be vested in a legislature, which shall consist of a Senate and a House of Representatives. The Senate shall consist of eight members, two from each of the four judicial divisions into which Alaska is now divided by Act of Congress; each of whom shall have at the time of his election the qualifications of an elector in Alaska, and shall have been a resident and an inhabitant in the division from which he is elected for at least two years prior to the date of his election. The term of office of each member of the Senate shall be four years: Provided, That immediately after they shall be assembled in consequence of the first election [22] they shall, by lot or drawing, be divided in each division into two classes; the seats of the members of the first class shall be vacated at the end of two years and the seats of the members of the second class shall be vacated at the end of four years, so that one member of the Senate shall, after the first elec-

tion, be elected biennially at the regular election from each division. The House of Representatives shall consist of sixteen members, four from each of the four judicial divisions into which Alaska is now divided by Act of Congress. The term of office of each representative shall be for two years and each representative shall possess the same qualifications as are prescribed for members of the Senate and the persons receiving the highest number of legal votes in each judicial division cast in said election for senator or representative shall be deemed and declared elected to such office: Provided, That in the event of a tie vote the candidates thus affected shall settle the question by lot. In case of a vacancy in either branch of the legislature the governor shall order an election to fill such vacancy, giving due and proper notice thereof. That each member of the legislature shall be paid by the United States the sum of fifteen dollars per day for each day's attendance while the legislature is in session, and mileage, in addition, at the rate of fifteen cents per mile for each mile from his home to the capital and return by the nearest traveled route.

Sec. 5. Election of members of the legislature.— That the first election for members of the Legislature of Alaska shall be held on the Tuesday next after the first Monday in November, nineteen hundred and twelve, and all subsequent elections for the election of such members shall be held on the Tuesday next after the first Monday in November biennially thereafter; that the qualifications of electors, the regulations governing the creation of voting precincts, the

appointment and qualifications of election officers, the supervision of elections, the giving of notices thereof, the forms of ballots, the register of votes, the challenging of voters, and the returns and the canvass of the returns of the result of all such elections for members of the legislature shall be the same as those prescribed in the Act of Congress entitled 'An Act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska,' approved May seventh, nineteen hundred and six, and all the provisions of said Act which are applicable are extended to said elections for members of the legislature, and shall govern the same, and the canvassing board created by said Act shall canvass the returns of such elections and issue certificates of election to each member elected to the said legislature; and all the penal provisions contained in section fifteen of the said Act shall apply to elections for members of the legislature as fully as they now apply to elections for Delegate from Alaska to the House of Representatives.

Sec. 6. Convening and sessions of legislature.—That the Legislature of Alaska shall convene at the capital at the City of Juneau, Alaska, on the first Monday in March in the year nineteen hundred and thirteen, and on the first Monday in March every two years thereafter; but the said legislature shall not continue in session longer than sixty days in any two years unless again convened in extraordinary session by a proclamation of the governor, which shall set forth the object thereof [23] and give at least thirty days' written notice to each member of said

legislature, and in such case shall not continue in session longer than fifteen days. The governor of Alaska is hereby authorized to convene the legislature in extraordinary session for a period not exceeding fifteen days when requested to do so by the President of the United States, or when any public danger or necessity may require it.

Sec. 7. Organization of the legislature.—That when the legislature shall convene under the law, the Senate and House of Representatives shall each organize by the election of one of their number as presiding officer, who shall be designated in the case of the Senate as ‘president of the Senate’ and in the case of the House of Representatives as ‘speaker of the House of Representatives,’ and by the election by each body of the subordinate officers provided for in section eighteen hundred and sixty-one of the United States Revised Statutes of eighteen hundred and seventy-eight, and each of said subordinate officers shall receive the compensation provided in that section: Provided, that no person shall be employed for whom salary, wages, or compensation is not provided in the appropriation made by Congress.

Sec. 8. Enacting clause—Subject of act.—That the enacting clause of all laws passed by the legislature shall be ‘Be it enacted by the Legislature of the Territory of Alaska.’ No law shall embrace more than one subject, which shall be expressed in its title.

Sec. 9. Legislative power — Limitations.—The legislative power of the Territory shall extend to all rightful subjects of legislation but not inconsistent

with the Constitution and laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents; nor shall the legislature grant to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise without the affirmative approval of Congress; nor shall the legislature pass local or special laws in any of the cases enumerated in the Act of July thirtieth, eighteen hundred and eighty-six; nor shall it grant private charters or special privileges, but it may, by general act, permit persons to associate themselves together as bodies corporate for manufacturing, mining, agricultural, and other industrial pursuits, and for the conduct of business of insurance, savings banks, banks of discount and deposit (but not of issue), loans, trust, and guaranty associations for the establishment and conduct of cemeteries, and for the construction and operation of railroads, wagon roads, vessels, and irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association, but the authority embraced in this section shall only permit the organization of corporations or associations whose chief business shall be in the Territory of Alaska; no divorce shall be granted by the legislature, nor shall any divorce be granted by the courts of the Territory, unless the applicant therefor shall have re-

sided in the Territory [24] for two years next preceding the application, which residence and all causes for divorce shall be determined by the Court upon evidence adduced in open court; nor shall any lottery or the sale of lottery tickets be allowed; nor shall the legislature or any municipality interfere with or attempt in anywise to limit the Acts of Congress to prevent and punish gambling, and all gambling implements shall be seized by the United States marshal or any of his deputies, or any constable or police officer, and destroyed; nor shall spirituous or intoxicating liquors be manufactured or sold, except under such regulations and restrictions as Congress shall provide; nor shall any public money be appropriated by the Territory or any municipal corporation therein for the support or benefit of any sectarian, denominational, or private school, or any school not under the exclusive control of the Government; nor shall the Government of the Territory of Alaska or any political or municipal corporation or subdivision of the Territory make any subscription to the capital stock of any incorporated company, or in any manner lend its credit for the use thereof; nor shall the Territory, or any municipal corporation therein, have power or authority to create or assume any bonded indebtedness whatever; nor to borrow money in the name of the Territory or of any municipal division thereof; nor to pledge the faith of the people of the same for any loan whatever, either directly or indirectly; nor to create, nor to assume, any indebtedness, except for the actual running expenses thereof; and no such indebtedness for actual

running expenses shall be created or assumed in excess of the actual income of the Territory or municipality for that year, including as a part of such income appropriations then made by Congress, and taxes levied and payable and applicable to the payment of such indebtedness and cash and other money credits on hand and applicable and not already pledged for prior indebtedness; Provided, That all authorized indebtedness shall be paid in the order of its creation; all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the actual value thereof. No tax shall be levied for Territorial purposes in excess of one per centum upon the assessed valuation of property therein in any one year; nor shall any incorporated town or municipality levy any tax, for any purpose, in excess of two per centum of the assessed valuation of property within the town in any one year; Provided, That the Congress reserves the exclusive power for five years from the date of the approval of this Act to fix and impose any tax or taxes upon railways or railway property in Alaska, and no acts or laws passed by the Legislature of Alaska providing for a county form of government therein shall have any force or effect until it shall be submitted to and approved by the affirmative action of Congress; and all laws passed, or attempted to be passed, by such legislature in said Territory inconsistent with the provisions of this section shall be null and void: Provided further, That nothing herein contained shall be held to abridge the right of the legis-

lature to modify the qualifications of electors by extending the elective franchise to women.

Sec. 10. Rules, quorums, and majority.—That the Senate and House of Representatives shall each choose its own officers, determine the rules of its own proceedings not inconsistent with this Act; and keep a journal of its proceedings; that the ayes [25] and noes of the members of either house on any question shall, at the request of one-fifth of the members present, be entered upon the journal; that a majority of the members to which each house is entitled shall constitute a quorum of such house for the conduct of business, of which quorum a majority vote shall suffice; that a smaller number than a quorum may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalties as each house may provide; that for the purpose of ascertaining whether there is a quorum present the presiding officer shall count and report the actual number of members present.

Sec. 11. Legislator shall not hold other office.—That no member of the legislature shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected and for one year after the expiration of such term; and no person holding a commission or appointment under the United States shall be a member of the legislature or shall hold any office under the government of said Territory.

Sec. 12. Exemptions of legislators.—That no member of the legislature shall be held to answer before any other tribunal for any words uttered in the

exercise of his legislative functions. That the members of the legislature shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance upon the sessions of the respective houses, and in going to and returning from the same; Provided, That such privilege as to going and returning shall not cover a period of more than ten days each way, except in the second division, when it shall extend to twenty days each way, and the fourth division to fifteen days each way.

Sec. 13. Passage of laws.—That a bill in order to become a law shall have three separate readings in each house, the final passage of which in each house shall be by a majority vote of all the members to which such house is entitled, taken by ayes and noes, and entered upon its journal. That every bill, when passed by the house in which it originated or in which amendments thereto shall have originated, shall immediately be enrolled and certified by the presiding officer and the clerk and sent to the other house for consideration.

Sec. 14. The veto power.—That, except as herein provided, all bills passed by the legislature shall, in order to be valid, be signed by the governor. That every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses, and shall thereupon be presented to the governor. If he approves it, he shall sign it and it shall become a law at the expiration of ninety days thereafter, unless sooner given effect by a two-thirds vote of said legislature. If the governor does not approve such bill, he may return it, with his objec-

tions, to the legislature. He may veto any specific item or items in any bill which appropriates money for specific purposes, but shall veto other bills, if at all, only as a whole. That upon the receipt of a veto message from the governor each house of the legislature shall enter the same at large upon its journal and proceed to reconsider [26] such bill, or part of a bill, and again vote upon it by ayes and noes, which shall be entered upon its journal. If, after such reconsideration, such bill or part of a bill shall be approved by a two-thirds vote of all the members to which each house is entitled, it shall thereby become a law. That if the governor neither signs nor vetoes a bill within three days (Sundays excepted) after it is delivered to him, it shall become a law without his signature, unless the legislature adjourns *sine die* prior to the expiration of such three days. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature, by its adjournment, prevents the return of the bill, in which case it shall not be a law.

Sec. 15. Payment of legislative expenses.—That there shall be annually appropriated by Congress a sum sufficient to pay the salaries of members and authorized employees of the Legislature of Alaska, the printing of the laws, and other incidental expenses thereof; the said sums shall be disbursed by the governor of Alaska, under sole instructions from the Secretary of the Treasury, and he shall account quarterly to the Secretary for the manner in which

the said funds shall have been expended; and no expenditure, to be paid out of money appropriated by Congress, shall be made by the governor or by the legislature for objects not authorized by the Acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

Sec. 16. Laws transmitted to President and printed.—That the governor of Alaska shall, within ninety days after the close of each session of the Legislature of the Territory of Alaska, transmit a correct copy of all the laws and resolutions passed by the said legislature, certified to by the secretary of the Territory, with the seal of the Territory attached; one copy to the President of the United States, and one to the Secretary of State of the United States; and the legislature shall make provisions for printing the session laws and resolutions within ninety days after the close of each session and for their distribution to public officials and sale to the people of the Territory.

Sec. 17. Election of Delegates.—That after the year nineteen hundred and twelve the election for Delegate from the Territory of Alaska, provided by 'An Act providing for the election of a Delegate to the House of Representatives from the Territory of Alaska,' approved May seventh, nineteen hundred and six, shall be held on the Tuesday next after the first Monday in November in the year nineteen hundred and fourteen, and every second year thereafter on the said Tuesday next after the first Monday in November, and all of the provisions of the aforesaid Act shall continue to be in full force and effect and

shall apply to the said election in every respect as is now provided for the election to be held in the month of August therein: Provided, That the time for holding an election in said Territory for Delegate in Alaska to the House of Representatives to fill a vacancy, whether such vacancy is caused by failure to elect at the time prescribed by law, or by the death, resignation, or incapacity or a person elected, may be [27] prescribed by an act passed by the Legislature of the Territory of Alaska: Provided, further, That when such election is held it shall be governed in every respect by the laws passed by Congress governing such election.

Sec. 18. Creating railroad commission.—That an officer of the Engineer Corps of the United States Army, a geologist in charge of Alaska surveys, an officer in the Engineer Corps of the United States Navy, and a civil engineer who has had practical experience in railroad construction and has not been connected with any railroad enterprise in said Territory be appointed by the President as a commission hereby authorized and instructed to conduct an examination into the transportation question in the Territory of Alaska; to examine railroad routes from the seaboard to the coal fields and to the interior and navigable waterways; to secure surveys and other information with respect to railroads, including cost of construction and operation; to obtain information in respect to the coal fields and their proximity to railroad routes; and to make report of the facts to Congress on or before the first day of December, nineteen hundred and twelve, or as soon thereafter

as may be practicable, together with their conclusions and recommendations in respect to the best and most available routes for railroads in Alaska which will develop the country and the resources thereof for the use of the people of the United States; Provided further, That the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated to defray the expenses of said commission.

Sec. 19. Laws relating to Alaska (compilation to be made). That the Committee on Territories of the Senate and the Committee on Territories of the House of Representatives are hereby authorized, empowered, and directed to jointly codify, compile, publish, and annotate all the laws of the United States applicable to the Territory of Alaska, and said committees are jointly authorized to employ such assistance as may be necessary for that purpose; and the sum of Five Thousand Dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to cover the expenses of said work, which shall be paid upon vouchers properly signed and approved by the chairman of said committees.

Ses. 20. Laws shall be submitted to Congress.—That all laws passed by the Legislature of the Territory of Alaska shall be submitted to the Congress by the President of the United States, and, if disapproved by Congress, they shall be null and of no effect.”

That subsequent to the passage of the said Organic

Act, and on, to wit, January 5, 1914, it was decided by the United States Circuit Court of Appeals for the Ninth Circuit, in the two actions of Callahan vs. Marshall and Callahan vs. United States, [28] being cases numbered 2305 and 2308, respectively, on the records of said court, that the act of the legislature of the Territory of Alaska purporting to impose a poll tax upon male persons in the Territory of Alaska and providing means for its collection, which said act is known and designated as chapter 54 of the Sessions Laws of Alaska for the year 1913, was invalid for reasons set forth in the opinion of said Court, which said opinion is reported in volume 210 of the Federal Reporter at page 230 et seq., and to which opinion specific reference is hereby made.

That the aforesaid Organic Act, ever since its enactment has been, and now is, in full force and effect, save that by act of Congress, under date of August 29, 1914, and subsequent to the rendition of the aforesaid opinion by the Circuit Court of Appeals, Congress enacted the following law:

"An Act to Amend an Act entitled 'An Act creating a legislative assembly in the Territory of Alaska and conferring legislative power thereon, and for other purposes,' approved August twenty-fourth, nineteen hundred and twelve.

(Power of courts to enforce statutes—Legislative power—costs of prosecutions.) That nothing in that Act of Congress entitled 'An Act creating a legislative assembly in the Territory of Alaska and conferring legislative power thereon, and for other purposes,' approved August twenty-fourth, nineteen

hundred and twelve, shall be so construed as to prevent the courts now existing or that may be hereafter created in said Territory from enforcing within their respective jurisdictions all laws passed by the legislature within the power conferred upon it, the same as if such laws were passed by Congress, nor to prevent the legislature passing laws imposing additional duties, not inconsistent with the present duties of their respective offices, upon the governor, marshals, deputy marshals, clerks of the district courts, and United States commissioners acting as justices of the peace, judges of probate courts, recorders, and coroners, and providing the necessary expenses of performing such duties, and in the prosecuting of all crimes denounced by Territorial laws the costs shall be paid the same as is now or may hereafter be provided by Act of Congress providing for the prosecution of criminal offenses in said Territory, except that in prosecutions growing out of any revenue law passed by the legislature the costs shall be paid as in civil actions and such prosecutions shall be in the name of the Territory." [29]

## V.

That by Act approved April 29, 1915, the Legislature of the Territory of Alaska enacted a law designated as House Bill No. 109, which is as follows, to wit:

## "CHAPTER 76.

(House Bill No. 109.)

AN ACT to establish a system of taxation, create revenue, and provide for collection thereof, for the Territory of Alaska, and for other purposes; and to

amend an Act entitled 'An Act to establish a system of taxation, create revenue, and provide for collection thereof for the Territory of Alaska, and for other purposes,' approved May 1, 1913, and declaring an emergency.

Be it Enacted by the Legislature of the Territory of Alaska:

Section 1. That any person, firm or corporation prosecuting or attempting to prosecute any of the following lines of business in the Territory of Alaska shall apply for and obtain a license and pay for said license for the respective lines of business as follows:

1st. Attorneys at Law, Doctors and Dentists: Ten Dollars per annum.

2d. Automobiles: Five dollars per annum.

3d. Bakeries: Fifteen dollars per annum.

4th. Electric Light and Power Plants selling light and power to the public: One-half of 1 per cent of the gross receipts in excess of twenty-five hundred dollars.

5th. Employment Agencies: Operating for hire and collecting a fee from employees, five hundred dollars per annum.

6th. Fisheries: Salmon canneries, four cents per case on King and Reds or Sockeye; two cents per case on Medium Reds; one cent per case on all others.

7th. Salteries: Two and one-half cents per one hundred pounds on all fish salted or mild cured, except herring.

8th. Fish Traps: Fixed or floating, one hundred dollars per annum, So called dummy traps included.

9th. Gill Nets: One dollar per hundred fathoms or fraction thereof.

10th. Cold Storage Fish Plants: Doing a business of one hundred thousand dollars per annum or more, five [30] hundred dollars per annum; doing a business of seventy-five thousand dollars per annum, and less than one hundred thousand dollars, three hundred and seventy-five dollars per annum; doing a business of fifty thousand and less than seventy-five thousand dollars per annum, two hundred and fifty dollars per annum; doing a business of twenty-five thousand and less than fifty thousand dollars per annum, one hundred and twenty-five dollars per annum; doing a business of ten thousand dollars and less than twenty-five thousand dollars per annum, fifty dollars per annum; doing a business of four thousand, and less than ten thousand dollars per annum, twenty-five dollars per annum; doing a business of under four thousand dollars per annum, ten dollars per annum. The 'Annual Business' under this section shall be considered the amount paid per annum for the product.

11th. Laundries: Doing a business of over five thousand dollars per annum, twenty-five dollars per annum.

12th. Meat Markets: Doing a business of not less than ten thousand nor more than twenty-five thousand dollars per annum, ten dollars per annum; doing a business of not less than twenty-five thousand nor more than fifty thousand dollars per annum, thirty dollars; doing a business of not less than fifty thousand nor more than seventy-five thousand

dollars per annum, one hundred dollars per annum; doing a business of not less than seventy-five thousand nor more than two hundred thousand dollars per annum, two hundred and fifty dollars per annum; doing a business of over two hundred thousand dollars per annum, five hundred dollars per annum. That every separate meat market or establishment shall be considered a separate business.

13th. Mining: One per cent of the net income in excess of five thousand dollars. By 'net income' is meant the cash value of the output of the mine less operating expenses, repairs and betterments actually done. By 'mining' is meant any operation by which valuable metals, ores, minerals or marketable stone is extracted from the earth.

14th. Public Scavengers: Fifty (\$50.00) dollars per annum.

15th. Ships and Shipping: Freight and Transportation: Ocean and coast-wise vessels doing business for hire plying in Alaska waters, registered in Alaska and not registered elsewhere in the United States and not paying a tax or license elsewhere, and freight and passenger lines propelled by mechanical power registered in the Territory of Alaska and not paying a license or tax elsewhere in the United States, and river and lake steamers and barges, as well as transportation lines doing business wholly within the Territory of Alaska, one dollar per ton on net tonnage, custom house measurement of such vessel.

16th. Telephone Companies: One-half of one per cent of gross receipts in excess of Fifteen (\$1,500.00) Hundred Dollars. [31]

17th. Water Works: Selling water or power to the public, one-half of one per cent of gross receipts in excess of Twenty-five (\$2500.00) Hundred Dollars.

18th. Public Messengers: Twenty-five (\$25.00) Dollars per annum.

Section 2. Every person, firm or corporation desiring to engage in any of the lines of business specified in Section One, shall first apply to and obtain from the Territorial Treasurer a license. If the tax for the license applied for is a fixed sum, the amount of such license tax shall accompany the application. If the amount of the tax is not a fixed sum, the applicant shall state in his application that he agrees to pay the license tax, and will make a true return and will pay to the Treasurer such tax on or before the 15th day of the next ensuing January. The applicant shall also state the name of the person, firm or corporation making the application, the line of business to be licensed, and the place where said business will be carried on. Upon the receipt of the application in proper form, the Treasurer shall issue the license as of the date of the application, and the applicant may carry on the business from and after the date the application is actually made. All license taxes, except those where the tax is a fixed one, shall be due and payable on December 31st of each year, and must be paid on or before January 15th following. And it shall be the duty of the person, firm or corporation engaged in any of said lines of business, to make a return under oath, to the Treasurer on or before January 15th of

each year, setting forth the name of the license, the number of the license, and all the facts regarding the business, necessary to enable the Treasurer to determine the amount of the tax to be paid. And all application for renewals of such licenses shall be made on or before January 15th of the calendar year for which such renewal is made.

Provided: Any person, firm or corporation now engaged in any of the lines of business specified in Section one shall comply with this Act on or before July 1st, 1915, by applying for the license (and paying the tax if a fixed sum) for the calendar year ending December 31st, 1915, and all taxes for the current year shall be calculated for the year beginning January 1st, and ending December 31st, 1915.

Any person, firm or corporation violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of the amount of the tax with ten per cent added, for which the defendant was liable. Each month or fraction of a month in which business is carried on in violation of this Act shall be deemed a separate offense, and prosecution therefor may be by information filed by the Attorney-General or other authorized legal counsel of the Territory in any Court of competent jurisdiction, and upon conviction the Court shall enter a judgment for the fine and costs incurred, and such judgment may be enforced as judgments in civil actions or by imprisonment at the rate of one day for each two dollars of such fine and costs. [32]

PROVIDED: That in any prosecution hereunder the Attorney-General or other authorized legal

counsel of the Territory may, with the consent of the Governor, compromise the case by accepting from the defendant a sum not less than the tax, legal interest thereon and all costs and expenses.

The Territorial Treasurer is authorized and directed to prescribe suitable forms for applications, licenses, returns and such other forms as may be necessary or proper to carry this law into effect. He shall distribute such forms to the public through the Clerks' of the Court and Marshal's offices in the several Divisions for use of those subject to the taxes herein laid.

Section 3. It shall be the duty of the Attorney-General or other authorized legal counsel of the Territory to enforce the provisions of this Act; and for that purpose may with the approval of the Governor, employ such assistants as he may deem necessary, but the compensation for the services of such assistants shall be paid out of the fund recovered, and the Territory shall not be liable therefor in any event beyond fifteen (15) per cent of the amount so recovered in each case; assistant counsel may, however, be employed at a previously agreed upon and stipulated fixed fee.

Section 4. Special remedies provided by this Act, or other Acts of the Legislature shall not be deemed exclusive, and any appropriate remedy either civil or criminal or both, may be invoked by the Territory in the collection of all taxes, and in civil actions the same penalties may be collected, as are herein provided in criminal actions.

Section 5. All taxes levied, laid or provided for

in this Act and penalties and interest accrued, are hereby declared to be a lien upon the real and personal property of the person, firm or corporation liable therefor, paramount and superior to all mortgages, hypothecations, conveyances and assignments.

Section 6. It shall be the duty of the United States Marshals and Deputy Marshals in the Territory of Alaska to enforce the provisions of this Act in their respective precincts, districts or divisions and to report all violations thereof to the Governor, and under his direction file information, or take such proceedings as he may direct; and for the services so performed they shall be paid under the provisions of Section three hereof. And for all negligence or wilful failure to perform such duties, Marshals and Deputy Marshals shall be liable to the Territory for all losses sustained, which liabilities may be enforced in any appropriate proceeding. And in the enforcement of this Act the Attorney-General or other legal counsel for the Territory and the Marshals and Deputy Marshals have the right to inspect the premises and all books and papers of the persons, firms or corporations claimed to be liable to the taxes herein laid, which right of inspection shall be enforced by the Courts upon application therefor. [33]

Section 7. The Act of which this Act is an amendment is hereby repealed, except in so far as the same is hereby re-enacted, but nothing herein contained shall be construed to relieve any person, firm or corporation from the payment of any tax, penalty and interest accrued and owing under the Act of

which this Act is an amendment, but all such taxes, penalties and interest shall be paid, or collected and enforced in the same manner as taxes herein provided for are collected and enforced.

Section 8. An emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval."

## VI.

That on June 26, 1906, the Congress of the United States duly enacted a law, *and* which is as follows, to wit:

"An Act for the Protection and Regulation of the Fisheries of Alaska.

Be it enacted, etc., That every person, company, or corporation carrying on the business of canning, curing, or preserving fish or manufacturing fish products within the territory known as Alaska, ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, or in any of the waters of Alaska over which the United States has jurisdiction, shall, in lieu of all other license fees and taxes therefor and thereon, pay license taxes on their said business and output as follows: Canned salmon, four cents per case; pickled salmon, ten cents per barrel; salt salmon in bulk, five cents per one hundred pounds; fish oil, ten cents per barrel; fertilizer, twenty cents per ton. The payment and collection of such license taxes shall be under and in accordance with the provisions of the Act of March third, eighteen hundred and ninety-nine, entitled 'An Act to define and punish crimes in the district of Alaska, and to provide a

code of criminal procedure for the district,' and amendments thereto.

Sec. 2. That the catch and pack of salmon made in Alaska by the owners of private salmon hatcheries operated in Alaska shall be exempt from all license fees and taxation of every nature at the rate of ten cases of canned salmon to every one thousand red or king salmon fry liberated, upon the following conditions:

That the Secretary of Commerce and Labor may from time to time, and on the application of the hatchery owner shall, within a reasonable time thereafter, cause such private hatcheries to be inspected for the purpose of determining the character of their operations, efficiency, and productiveness, and if he approve the same shall cause notice of such approval to be filed in the office of the clerk or deputy clerk of the United States district court of the Division of the district of Alaska wherein any such hatchery is located, and shall also notify the owners of such hatchery of the action taken by him. The owner, [34] agent, officer, or superintendent of any hatchery the effectiveness and productiveness of which has been approved as above provided shall, between the thirtieth day of June and the thirty-first day of December of each year, make proof of the number of salmon fry liberated during the twelve months immediately preceding the thirtieth day of June, by a written statement under oath. Such proof shall be filed in the office of the clerk or deputy clerk of the United States district court of the division of the district of Alaska wherein such

hatchery is located, and when so filed shall entitle the respective hatchery owners to the exemption as herein provided; and a false oath as to the number of salmon fry liberated shall be deemed perjury and subject the offender to all the pains and penalties thereof. Duplicates of such statements shall also be filed with the Secretary of Commerce and Labor. It shall be the duty of such clerk or deputy clerk in whose office the approval and proof heretofore provided for are filed to forthwith issue to the hatchery owner, causing such proofs to be filed, certificates which shall not be transferable and of such denominations as said owner may request (no certificate to cover fewer than one thousand fry), covering in the aggregate the number of fry so proved to have been liberated; and such certificates may be used at any time by the person, company, corporation, or association to whom issued for the payment *pro tanto* of any license fees or taxes upon or against or on account of any catch or pack of salmon made by them in Alaska; and it shall be the duty of all public officials charged with the duty of collecting or receiving such license fees or taxes to accept such certificates in lieu of money in payment of all license fees or taxes upon or against the pack of canned salmon at the ratio of one thousand fry for each ten cases of salmon. No hatchery owner shall obtain the rebate from the output of any hatchery to which he might otherwise be entitled under this Act unless the efficiency of said hatchery has first been approved by the Secretary of Commerce and Labor in the manner herein provided for.

Sec. 3. That it shall be unlawful to erect or maintain any dam, barricade, fence, trap, fish wheel, or other fixed or stationary obstruction, except for purposes of fish culture, in any of the waters of Alaska at any point where the distance from shore to shore is less than five hundred feet, or within five hundred yards of the mouth of any red-salmon stream where the same is less than five hundred feet in width, with the purpose or result of capturing salmon or preventing or impeding their ascent to their spawning grounds, and the Secretary of Commerce and Labor is hereby authorized and directed to have any and all such unlawful obstructions removed or destroyed.

Sec. 4. That it shall be unlawful to lay or set any drift net, seine, set net, pound net, trap, or any other fishing appliance, for any purpose except for purposes of fish culture, across or above the tide waters of any creek, stream, river, estuary, or lagoon, for a distance greater than one-third the width of such creek, stream, river, estuary, or lagoon, or within one hundred yards outside of the mouth of any red-salmon stream where the same is less than five hundred feet in width. It shall be unlawful to lay or set any seine or net of any kind within one hundred yards of any other seine, net, or other fishing [35] appliance which is being or which has been laid or set in any of the waters of Alaska, or to drive or construct any trap or any other fixed fishing appliance within six hundred yards laterally or within one hundred yards endwise of any other trap or fixed fishing appliance.

Sec. 5. That it shall be unlawful to fish for, take, or kill any salmon of any species in any manner or by any means except by rod, spear, or gaff, in any of the waters of Alaska over which the United States has jurisdiction, except Cook Inlet, the Delta of Copper River, Bering Sea, and the waters tributary thereto, from six o'clock post meridian of Saturday of each week until six o'clock antemeridian of the Monday following, or to fish for, or catch, or kill in any manner or by any appliances except by rod, spear, or gaff, any salmon in any stream of less than one hundred yards in width in Alaska between the hours of six o'clock in the evening and six o'clock in the morning of the following day of each and every day of the week. Throughout the weekly close season herein prescribed the gate, mouth or tunnel of all stationary and floating traps shall be closed, and twenty-five feet of the webbing or net of the 'heart' of such traps on each side next to the 'pot' shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes.

Sec. 6. That the Secretary of Commerce and Labor may, in his discretion, set aside any stream or lakes as preserves for spawning grounds, in which fishing may be limited or entirely prohibited; and when, in his judgment, the results of fishing operations in any stream, or off the mouth thereof, indicate that the number of salmon taken is larger than the natural production of salmon in such stream, he is authorized to establish close seasons or to limit or prohibit fishing entirely for one year or more within such stream or within five hundred yards of

the mouth thereof, so as to permit salmon to increase: Provided, however, That such power shall be exercised only after all persons interested shall be given a hearing, of which due notice must be given by publication; and where the interested parties are known to the Department they shall be personally notified by a notice mailed not less than thirty days previous to such hearing. No order made under this section shall be effective before the next calendar year after same is made: And provided further, That such limitations and prohibitions shall not apply to those engaged in catching salmon who keep such streams fully stocked with salmon by artificial propagation.

Sec. 7. That it shall be unlawful to can or salt for sale for food any salmon more than forty-eight hours after it has been killed.

Sec. 8. That it shall be unlawful for any person, company, or corporation wantonly to waste or destroy salmon or other food fishes taken or caught in any of the waters of Alaska.

Sec. 9. That it shall be unlawful for any person, company or corporation canning, salting, or curing fish of any species in Alaska to use any label, brand, or trade-mark which shall tend to misrepresent the contents of any package of fish offered [36] for sale: Provided, That the use of the terms 'red,' 'medium red,' 'pink,' 'chum,' and so forth, as applied to the various species of Pacific salmon under present trade usages shall not be deemed in conflict with the provisions of this Act when used to designate salmon of those known species.

Sec. 10. That every person, company, and corporation engaged in catching, curing, or in any manner utilizing fishery products, or in operating fish hatcheries in Alaska, shall make detailed annual reports thereof to the Secretary of Commerce and Labor, on blanks furnished by him, covering all such facts as may be required with respect thereto for the information of the Department. Such reports shall be sworn to by the superintendent, manager or other person having knowledge of the facts, a separate blank form being used for each establishment in cases where more than one cannery, saltery, or other establishment is conducted by a person, company, or corporation, and the same shall be forwarded to the Department at the close of the fishing season and not later than December fifteenth of each year.

Sec. 11. That the catching or killing, except with rod, spear, or gaff, of any fish of any kind or species whatsoever in any of the waters of Alaska over which the United States has jurisdiction, shall be subject to the provisions of this Act, and the Secretary of Commerce and Labor is hereby authorized to make and establish such rules and regulations not inconsistent with law as may be necessary to carry into effect the provisions of this Act.

Sec. 12. That to enforce the provisions of this Act and such regulations as he may establish in pursuance thereof, the Secretary of Commerce and Labor is authorized and directed to depute, in addition to the agent and assistant agent of salmon fisheries now provided by law, from the officers and employees of the Department of Commerce and

Labor, a force adequate to the performance of all work required for the proper investigation, inspection, and regulation of the Alaskan fisheries and hatcheries, and he shall annually submit to Congress estimates to cover the cost of the establishment and maintenance of fish hatcheries in Alaska, the salaries and actual traveling expenses of such officials, and for such other expenditures as may be necessary to carry out the provisions of this Act.

Sec. 13. That any person, company, corporation or association violating any provision of this Act or any regulation established in pursuance thereof shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars or imprisonment at hard labor for a term of not more than ninety days, or by both such fine and imprisonment, at the discretion of the court; and in case of the violation of any of the provisions of section four of this Act and conviction thereof a further fine of not more than two hundred and fifty dollars per diem may, at the discretion of the court, be imposed for each day such obstruction is maintained. And every vessel or other apparatus or equipment used or employed in violation of any provision of this Act, or of any regulation made thereunder, may be seized by order of the Secretary of Commerce and Labor, and shall be held subject to the payment of such fine or fines as may be imposed.

Sec. 14. That the violation of any provision of this Act may be prosecuted in any district court of Alaska or any district [37] court of the United States in the States of California, Oregon, or Washington,

And it shall be the duty of the Secretary of Commerce and Labor to enforce the provisions of this Act and the rules and regulations made thereunder. And it shall be the duty of the district attorney to whom any violation is reported by any agent or representative of the Department of Commerce and Labor to institute proceedings necessary to carry out the provisions of this Act.

Sec. 15. That all Acts or parts of Acts inconsistent with the provisions of this Act are, so far as inconsistent, hereby repealed.

Sec. 16. That this Act shall take effect and be in force from and after its passage."

## VII.

That the provisions of the Act of Congress of March 3, 1899, as the same was amended on June 6, 1900, entitled, "An Act to define and punish crimes in the District of Alaska and to provide a code of criminal procedure for the District," referred to in paragraph one of the said Act of June 26, 1906, are as follows, to wit:

"That any person or persons, corporation or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain license so to do from a district court or a subdivision thereof in said District, and pay for said license for the respective lines of business and trade as follows, to wit:

'Abstract offices, fifty dollars per annum.

'Banks, two hundred and fifty dollars per annum.

'Boarding houses having accommodations for ten

or more guests, fifteen dollars per annum.

‘Brokers (money, bill, note and stock), one hundred dollars per annum.

‘Billiard rooms, fifteen dollars per table per annum.

‘Bowling alleys, fifteen dollars per annum.

‘Breweries, five hundred dollars per annum.

‘Bottling works, two hundred dollars per annum.

‘Cigar manufacturers, twenty-five dollars per annum.

‘Cigar stores or stands, fifteen dollars per annum.

‘Drug stores, fifty dollars per annum.

‘Public docks, wharves, and warehouses, ten cents per ton on freight handled or stored.

‘Electric-light plants, furnishing light and power for sale, three hundred dollars per annum.

‘Fisheries: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish-oil works, [38] ten cents per barrel; fertilizer works, twenty cents per ton.

‘Freight and passenger transportation lines, propelled by mechanical power registered in the District of Alaska, or not paying license or tax elsewhere, and river and lake steamers, as well as transportation lines doing business wholly within the District of Alaska, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel.

‘Gas plants, for heat or light, for sale, three hundred dollars per annum.

‘Hotels, fifty dollars per annum.

‘Insurance agents and brokers, twenty-five dollars per annum.

‘Halls, public, ten dollars per annum.

‘Jewelers, twenty-five dollars per annum.

‘Mines: Quartz mills, three dollars per stamp per year.

‘Mercantile establishments: Doing a business of one hundred thousand dollars per annum, five hundred dollars per annum; doing a business of seventy-five thousand dollars per annum, three hundred and seventy-five dollars per annum; doing a business of fifty thousand dollars per annum, two hundred and fifty dollars per annum; doing a business of twenty-five thousand dollars per annum, one hundred and twenty-five dollars per annum; doing a business of ten thousand dollars per annum, fifty dollars per annum; doing a business of under ten thousand dollars per annum, twenty-five dollars per annum; doing a business of under four thousand dollars per annum, ten dollars per annum.

‘Meat markets, fifteen dollars per annum.

‘Manufactories not enumerated herein, same classification and license charges as mercantile establishments.

‘Physicians, itinerant, fifty dollars per annum.

‘Plaining mills, fifty dollars per annum when not part of a sawmill.

‘Pawnbrokers, three hundred dollars per annum.

‘Peddlers, twenty-five dollars per annum.

‘Patent-medicine venders (not regular druggists), fifty dollars per annum.

‘Railroads, one hundred dollars per mile per annum on each mile operated.

‘Restaurants, fifteen dollars per annum.

'Real estate dealers and brokers, fifty dollars per annum.

'Ships and shipping: Ocean and coastwise vessels doing local business for hire plying in Alaskan waters, registered in Alaska or not paying license or tax elsewhere, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel.

'Sawmills, ten cents per thousand feet on the lumber sawed.

'Steam ferries, one hundred dollars per year.

'Toll road or trail, two hundred dollars per annum.

'Tobacconists, fifteen dollars per annum.

'Tramways, ten dollars for each mile or fraction thereof per annum.

'Transfer companies, fifty dollars per annum.

'Taxidermists, ten dollars per annum. [39]

'Theaters, one hundred dollars per annum.

'Waterworks, furnishing water for sale, fifty dollars per annum.' "

#### VIII.

That the defendant has, ever since the enactment of said act of Congress dated June 26, 1906, annually made application for and been granted licenses to operate a salmon cannery as therein stated, and has paid the license taxes on its said business and output as therein provided; that it has complied with all the provisions of chapter 3 of title 7 of the Compiled Laws of Alaska, relating to fish and fisheries, and that the license fees and taxes so paid by defendant have been accepted by the United States under the provisions of said act.

#### IX.

That the defendant has declined to apply for or

obtain a license from the Territory of Alaska, or to pay for said license for its said business of conducting a salmon cannery in accordance with the provisions of said House Bill No. 109, and that by reason of such refusal the Territory of Alaska has deemed the defendant guilty of a misdemeanor. That a controversy has therefore arisen between the parties hereto as to the validity of the provisions of the said House Bill No. 109, so far as the same requires this defendant to apply for and obtain licenses to operate its said salmon cannery and gill-nets and to pay license fees thereon, the defendant contending that it is not required by law to apply for said licenses, or any of them, or to pay the said license charges, or any of them, so as aforesaid provided by House Bill No. 109, and the Chief Counsel representing the Territory of Alaska contending that the defendant [40] is required by law to so apply for said licenses, and to pay said charges and all of them.

X.

It is stipulated and agreed by the parties hereto, that in the event that the Court shall determine that the said license fees and charges provided by said House Bill 109 be valid, then that a judgment may be entered against the defendant in the following amounts, to wit:

For salmon packed in the year 1915, \$1,158.28; for gill-nets used in the year 1915, \$131.75, together with interest thereon at the rate of 8% per annum from January 15, 1916.

And for a further, separate and distinct statement of facts, hereby submitted, it is agreed:

I.

That by an act approved May 1, 1913, the legislature of the Territory of Alaska enacted a law designated as House Bill No. 96, which is as follows, to wit:

“AN ACT to establish a system of taxation, Create Revenue, and Provide for Collection Thereof for the Territory of Alaska, and for other Purposes.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. That any person or persons, corporation, or company prosecuting or attempting to prosecute any of the following lines of business within the Territory of Alaska, shall first apply for and obtain license so to do from the district court or subdivision thereof in said Territory, and pay for said license for the respective lines of business and trades, as follows, to wit:

Fisheries: Salmon canneries, seven cents per case on sock eye and king salmon; one-half cent a case on hump-back, coho, or chum salmon.

Cold Storage Fish Plants: Doing a business of one hundred thousand dollars per annum, five hundred dollars per annum; doing a business of seventy-five thousand dollars per [41] annum, three hundred and seventy-five dollars per annum; doing a business of fifty thousand dollars per annum, two hundred and fifty dollars per annum; doing a business of twenty-five thousand dollars per annum, one hundred and twenty-five dollars per annum; doing a business of ten thousand dollars per annum, fifty dollars per annum; doing a business of under ten

thousand dollars per annum twenty-five dollars per annum; doing a business of under four thousand dollars per annum, ten dollars per annum. The annual business of this section shall be considered the amount paid per annum for the product.

Laundries doing a business of more than five thousand dollars per annum, twenty-five dollars.

Meat Markets: Doing a business of more than five thousand dollars per annum and less than ten thousand dollars per annum, twenty-five dollars per annum; doing a business of more than ten thousand dollars per annum, fifty dollars per annum; doing a business of more than fifty thousand dollars per annum, seventy-five dollars per annum; doing a business of more than seventy-five thousand dollars per annum, three hundred and seventy-five dollars per annum; doing a business of more than one hundred thousand dollars per annum, five hundred dollars per annum.

Furs: One-half of one per cent of the gross value of any furs, the product of Alaska, exported from the Territory and it shall be unlawful and punishable under this act for any person to ship from the Territory of Alaska any furs without having first paid for and obtained a license permit as herein provided; and no custom officer shall issue a manifest for nor postmaster receipt for mailing any furs unless the shipper thereof shall present a certificate for this license fee signed by the clerk of the district court of the division in which the furs were shipped.

Telephone Companies: Doing a business of more than twenty-four hundred dollars per annum, one-

half of one per cent of the gross volume of business per annum over and above the sum of twenty-four hundred dollars.

Transient and Itinerant Merchants, two hundred dollars per annum.

Mining: One-half of one per cent on net income over and above five thousand dollars per annum.

Insurance Companies: A tax shall be imposed on all premiums payable on risks in the Territory of Alaska of one per cent of the amount of such premiums.

1. In the case of such insurance premiums being paid to companies not licensed to do business in the Territory of Alaska, mutual's or Lloyd's, such tax shall be payable by the insured;

2. In case of premiums paid to companies licensed and doing business in the Territory of Alaska; such tax shall be payable by the company receiving the same.

Express Companies: Express Companies to pay one per cent of the business done by said express companies in the Territory of Alaska per annum.

Lighterage Companies: Ten cents per ton on freight handled or lightered.

Public Messengers, twenty-five dollars per annum.

Public Scavenger, fifty dollars per annum.

Lodging Houses, ten dollars per annum.

Reindeer owned by white men, twenty-five cents per head per annum. [42]

Fishing Vessels: Fishing vessels propelled by mechanical power of over thirty tons net and plying or fishing in the waters of Alaska, one dollar per ton

per annum on net tonnage, custom-house measurement, of each vessel.

**Transportation:** On every ton of freight shipped into or from the Territory of Alaska by any transportation company or steamship line, per annum, payable through the custom house at time of entry to be paid into the Territorial Treasury, ten cents per ton, except return shipments of casks, tanks, kegs, carboys or other receptacles used in the shipment of liquids.

**Sec. 2.** That the licenses provided for in this act shall be issued by the clerk of the district court or any subdivision thereof in compliance with the order of the court or judge thereof duly made and entered; and the clerk of the court shall keep a full record of all applications for license and of all recommendations for and remonstrances against the granting of licenses and the action of the court thereon: Provided, That the clerk of said court in each division thereof shall give bond or bonds in such amount as the Treasurer of the Territory may require and in such form as the governor may approve, the premium on said bond to be paid from any funds in the Treasury of the Territory of Alaska not otherwise appropriated, and all moneys received for licenses by any clerk of a district court in this Territory under this act, except the moneys derived from fisheries, (one-half of which amount shall be paid by the clerk into the Territorial Treasury to be made available for the propagation and preservation of salmon and other fish in the Territory of Alaska and to be expended under the direction of the United

States Bureau of Fisheries) shall, except as otherwise provided by law, be covered into the Treasury of the Territory of Alaska, under such rules and regulations as the Territorial Treasurer may prescribe.

Sec. 3. That any person, corporation or company doing or attempting to do business in violation of the provisions of this act, or without first having paid the license therein required, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined, for the first offense, in a sum equal to the license required for the business, trade or occupation; and for the second offense, fine equal to double amount of the license required; and for the third offense, three times the license required and imprisonment for not less than thirty days nor more than six months; Provided, That each day business is done or attempted to be done in violation of this act shall constitute a separate and distinct offense; Provided further, That in all prosecutions under this act the costs shall be assessed against any person, firm or corporation convicted of violations hereof, in addition to the fine or penalty imposed, and for failure to pay such fine and costs such person, firm or corporation may be imprisoned, in the discretion of the court, at the rate of one day for every two dollars of said fine and costs; Provided further, however, that in the event of any person, firm, or corporation shall fail to pay the license required by the provisions of this act and shall further fail to pay any fine that may be imposed by a court of competent jurisdiction, for such failure to so pay

said license fee or tax required by the provisions of this act, judgment may be entered against such firm, person or corporation and process shall be [43] issued for the enforcement of the collection of said judgment and in the same manner as judgments in civil proceedings.

Sec. 4. All United States marshals and their deputies as ex-officio constables, United States fish commissioners and their deputies, in the Territory of Alaska are hereby made license inspectors under this act and shall have power and authority to go upon premises and examine the books, papers, bills of lading, and all other documents bearing upon any matters provided for in this act, of any person, firm, or corporation whom they have reasonable grounds to believe is evading this act; and if any United States marshal, or his deputy, United States fish commissioner or his deputy, as ex-officio constables shall find any person, firm, or corporation violating this act, or any provision thereof, it shall be the duty of said deputy marshal to go before a United States commissioner, file a complaint in writing charging the person, firm or corporation so violating this act with a misdemeanor, as provided herein, and upon obtaining a warrant upon said complaint to arrest the said person, firm, or corporation and take him or them before the United States commissioner issuing the warrant for trial."

## II.

That defendant, during the year 1913, and subsequent to July 31st of that year, packed at its said cannery in Alaska, the follownig cases of salmon, to wit:

Of Sockeye and King Salmon.....29,955 Cases  
Of Humpback, Cohoe or Chum Salmon.. 5,267 Cases

That for the year 1914, defendant packed at its said cannery the following cases of salmon, to wit:

Of Sockeye and King Salmon.....35,761 Cases  
Of Humpback, Cohoe or Chum Salmon.. 3,430 Cases

III.

That the defendant had, for the years 1913 and 1914, made application for and obtained from the Secretary of Commerce and Labor, licenses to transact its said business, and paid all license fees and charges required by the act of Congress dated June 26th, 1906, hereinbefore set forth, both upon the business of the defendant and its output. That the defendant has declined to apply for the licenses, or any of them, required by the said House Bill No. 96, enacted by the legislature of the Territory of Alaska, and has declined to pay the license fees therein provided, and the same have not been paid in whole or in part. [44]

IV.

It is further stipulated that if the Court shall determine that the defendant is legally liable for the license fees and taxes provided by the said House Bill No. 96, that judgment may be entered against the defendant herein for the following sum, to wit: Four Thousand, Six Hundred Forty-three and 60/100 (4,643.60) Dollars in addition to the amounts named on page 22 hereof, as license fees and taxes for the year 1915.

## V.

It is further agreed that all of the foregoing acts of Congress and the legislative acts of the legislature of the Territory of Alaska and the decisions of the United States Circuit Court of Appeals, may be considered in connection with the facts set forth in this additional statement of facts, with the same force and effect as if the same were fully set forth at large herein.

## VI.

It is further agreed that by the act of Congress dated June 26th, 1906, entitled "An act for the protection and regulation of the fisheries of Alaska," hereinbefore set forth, it is among other things provided that the catch and pack of salmon made in Alaska by the owners of private salmon hatcheries operated in Alaska shall be exempt from all license fees and taxation of every nature, at the rate of ten cases of canned salmon to every one thousand Red or King salmon fry liberated. That certain companies engaged in the business of canning salmon in the Territory of Alaska have for many years last past continuously maintained and operated private salmon hatcheries in Alaska, and that they have made application to the Secretary of Commerce and Labor that such private hatcheries be inspected, and [45] that the Secretary of Commerce and Labor has approved of such hatcheries and has caused notice of such approval to be filed in the office of the clerk of the United States District Court of the Division of the District of Alaska wherein such hatcheries are located, and

that all the steps have been taken and done by the owners of such private hatcheries to enable them to claim the exemption from license fees and taxation provided in section 2 of the said act of June 26th, 1906. That a controversy has arisen between the district of Alaska and the owners of said private salmon hatcheries as to the extent to which the liberation of salmon fry from said hatcheries, and the certificates issued therefor, shall be used for the purpose of discharging all license fees and taxes imposed upon the output of the canneries operated by the owners of said hatcheries, it being contended by the owners of such hatcheries that by the application of a certificate for each one thousand of salmon fry liberated they are released from all further obligation to pay any license fees or taxes imposed either by the Congress of the United States or by the legislature of Alaska upon ten cases of salmon put up by said canner, and it being contended on the other hand, by the chief counsel for the district of Alaska, that the said certificates for salmon fry so liberated do not operate to release the owners of said private salmon hatcheries from any obligation to pay the license fees and taxes so as aforesaid imposed by the acts of 1913 and 1915 of the legislature of Alaska. [46]

## VII.

It is stipulated by the parties hereto that this statement and any part thereof may be amended from time to time, either at or before the final argument before the Court, so as to set out fully all the facts necessary to enable the Court to determine

the matters in controversy.

### VIII.

It is further stipulated that the questions to be decided by the Court, and which are covered by this agreed statement of facts, are as follows, to wit:

1. Whether or not defendant, having complied with all the conditions and paid the license fees imposed by the said acts of Congress, is obliged to apply for a license and pay the license fees and taxes imposed by the said act of the legislature of Alaska designed as House Bill No. 96, approved May 1, 1913.

2. Whether or not defendant, having complied with all the conditions and paid the license fees imposed by the said acts of Congress, is obliged to apply for a license and pay the license fees and taxes imposed by the act of the legislature of Alaska known as House Bill No. 109, approved April 29, 1915.

3. Whether or not the owners of private salmon hatcheries, who are also engaged in the business of canning salmon in Alaska, are, by virtue of certificates issued to them by the Secretary of Commerce and Labor for salmon fry liberated from their said hatcheries, entitled, by virtue of such certificates, to have the same applied *pro tanto* in payment of all license fees and charges, not only imposed by the said acts of Congress but also by said acts of the legislature of Alaska.

### IX.

It is further stipulated and agreed by the parties hereto [47] that this controversy is real, and

that these proceedings are taken in good faith to determine the rights of the respective parties hereto, and that upon a judgment being given herein by the said District Court of Alaska, an appeal or writ of error will lie in behalf of the party against whom said judgment is given with like force and effect as if said judgment had been given in an action pending between said parties.

WHEREFORE, the parties hereto do hereby submit the foregoing to the Court for its decision, without action, in accordance with the provisions of chapter 28 of the Code of Civil Procedure of the District Alaska.

THE TERRITORY OF ALASKA.

By J. H. COBB,  
Its Chief Counsel.

ALASKA SALMON COMPANY.

By GEO. H. COLLINS, [Corporate Seal.]  
Its President.

Z. R. CHENEY,  
BOGLE, GRAVES, MERRITT & BOGLE,  
KERR, McCORD,  
CHICKERING & GREGORY,  
Attorneys for Defendant. [48]

United States of America,  
Territory of Alaska,—ss.

**[Affidavit of Governor Strong of Alaska.]**

J. F. A. STRONG, being first duly sworn on oath deposes and says: I am Governor of the Territory of Alaska. The controversy set forth in the foregoing and hereto attached statement is real, and the said

proceeding is taken in good faith to determine the rights of the parties.

J. F. A. STRONG.

Subscribed and sworn to before me this the 9th day of December, 1915.

[Notarial Seal]

E. L. COBB,

Notary Public in and for Alaska.

My commission expires Dec. 3, 1918. [49]

[Affidavit of Geo. H. Collins.]

State of California,

City and County of San Francisco,—ss.

GEORGE H. COLLINS,

C. E. N. P. being first duly sworn, deposes and says:

That he is an officer, to wit, the president, of Alaska Salmon Company, the defendant herein, and he makes this verification in behalf of said defendant. That he has read the foregoing agreed statement of facts and stipulation, and that the same is true of his own knowledge; that the controversy set forth in the agreed statement of facts is real, and that this proceeding is taken in good faith to determine the rights of the parties; that he, as president of said Alaska Salmon Company, is by the laws of the State of California authorized as a person upon whom service of summons may be made in any judicial proceeding against said Alaska Salmon Company.

GEO. H. COLLINS.

Subscribed and sworn to before me this 22d day of November, 1915.

[Notarial Seal]      CHARLES EDELMAN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My commission expires April 7th, 1918. [50]

The cause was argued orally by the respective counsel; at the conclusion of the arguments, counsel for the defendant submitted in writing and requested the Court to adopt the following conclusions of law, viz.:

**[Conclusions of Law Requested by Defendant.]**

**Conclusion No. One.**

That sections six and nine of the act of April 29, 1915, under which this suit is prosecuted, are void and invalid for the reasons:

(A) That the sections of said act above mentioned alter, modify and repeal the act of June 26, 1906, which said act of June 26, 1906, is set forth in paragraph VI of the agreed statement of facts;

(B) Because under the act of August 24, 1912, which said act is set forth in paragraph IV of the agreed statement of facts, the legislative assembly in the Territory of Alaska is prohibited from passing any laws relating to fish or fisheries in the Territory of Alaska;

(C) Because no assessment whatsoever was made upon the property of defendant, taxed under the act of April 29, 1915, prior to the levying of the tax.

The Court thereupon refused to adopt such conclusion, to which refusal defendant excepted, and exception was allowed.

## Conclusion No. Two.

The defendant company is not liable for any license taxes for the years 1913-1914, for the reasons that the act of May 1, 1913, designated as House Bill No. 96, did not provide for any civil liability.

The Court thereupon refused to adopt such conclusion, to which refusal defendant excepted, and exception was allowed. [51]

## Conclusion No. Three.

That the defendant, Alaska Salmon Company, having complied with all the conditions and paid the license fees imposed by the said acts of Congress, is not required to apply for a license and pay the license fees and taxes imposed by the act of the legislature of Alaska, approved May 1, 1913.

The Court thereupon refused to adopt such conclusion, to which refusal defendant excepted, and exception was allowed.

## Conclusion No. Four.

That the defendant, Alaska Salmon Company, having complied with all the conditions and paid the license fees imposed by the said acts of Congress, is not required to apply for a license and pay the license fees and taxes imposed by the act of the Alaska legislature, approved April 29, 1915.

The Court thereupon refused to adopt such conclusion, to which refusal defendant excepted, and exception was allowed.

## Conclusion No. Five.

That the owners of private salmon hatcheries in Alaska, who are also engaged in the business of canning salmon in Alaska, are by virtue of certificates

issued to them by the Secretary of Commerce and Labor for salmon fry liberated from their said hatcheries, entitled, by virtue of such certificates, to have the same applied *pro tanto*, in payment of all license fees and charges, not only imposed by the said acts of Congress, but also by said acts of the legislature of Alaska.

The Court thereupon refused to adopt such conclusion, to which refusal defendant excepted, and exception was allowed.

Conclusion No. Six.

Upon the agreed statement of facts, the Court doth find that the plaintiff is not entitled to any relief in this action, and that [52] defendant is entitled to its costs and disbursements herein expended.

The Court thereupon refused to adopt such conclusion, to which refusal defendant excepted, and exception was allowed.

[Conclusions of Law.]

The Court thereupon adopted and signed the following conclusions of law, viz.:

Conclusion No. One.

That compliance with all the conditions and the payment of the license fees imposed by the acts of Congress set forth in the agreed statement, does not relieve the defendant from the payment of the license taxes imposed by the act of the Alaska legislature approved May 1st, 1913, but that the defendant was obliged to apply for a license and pay the license fees and taxes so imposed.

To which conclusion defendant excepted, and exception was allowed.

## Conclusion No. Two.

That the defendant having complied with all the conditions and paid the license fees imposed by the acts of Congress in said agreed statement set forth, is obliged to apply for a license and pay the license fees and taxes imposed by the act of the legislature of Alaska known as House Bill No. 109 approved April 29th, 1915..

To which conclusion defendant excepted, and exception was allowed.

**[Order Settling and Allowing Bill of Exceptions, etc.]**

## JUDGE'S CERTIFICATE.

And now because the above and foregoing matters do not appear of record herein, I, Robert W. Jennings, Judge of the District Court for Alaska, Division Number One, before whom said cause was tried, [53] do hereby certify that the above and foregoing bill of exceptions contains the agreed statement of facts upon which the cause was tried, the conclusions of law requested by the defendant and refused by the Court, and the conclusions of law adopted by the Court; that the bill is correct in all respects, and is hereby approved, allowed and settled, and made a part of the record herein.

Dated this 23d day of December, A. D. 1915, during the term at which the judgment herein was rendered and entered.

ROBERT W. JENNINGS,  
Judge.

O.K.—COBB.

Filed in the District Court, District of Alaska,  
First Division, Dec. 23, 1915. J. W. Bell, Clerk.  
By L. E. Spray, Deputy. [54]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1407-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant,

**Citation on Appeal.**

United States of America,—ss.

The President of the United States to the Territory  
of Alaska, Plaintiff, and to J. H. Cobb, Its  
Chief Counsel, Greeting:

You are hereby cited and admonished to be and  
appear in the United States Circuit Court of Appeals  
for the Ninth Circuit, to be held in the City of San  
Francisco, State of California, within thirty days  
from the date of this writ, pursuant to an order al-  
lowing an appeal filed and of record in the office of  
the clerk of the United States District Court in and  
for the Territory of Alaska, Division Number One,  
in a cause wherein Alaska Salmon Company is ap-  
pellant, and the Territory of Alaska is appellee, to  
show cause, if any there be, why the judgment and  
decree rendered against the appellant, Alaska  
Salmon Company, in said cause, should not be cor-  
rected and speedy justice should not be done to the

parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 23d day of December, 1915, and of the independence of the United States the one hundred and thirty-ninth.

ROBERT W. JENNINGS,

Judge.

Copy received and service accepted this 23d day of December, 1915.

J. H. COBB,

Chief Counsel for the Territory of Alaska.

Filed in the District Court, District of Alaska, First Division. Dec. 23, 1915. J. W. Bell, Clerk.  
By ———, Deputy. [55]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1407-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant,

**Praeceptum [for Transcript of Record].**

To the Clerk of the above-entitled Court:

You will prepare a transcript of the record in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under the writ of error heretofore perfected to said Court, and include in said tran-

script the following pleadings, proceedings and papers on file, to wit:

1. Conclusions of Law Requested by Defendant.
2. Conclusions of Law and Judgment.
3. Assignment of Errors.
4. Petition for Appeal.
5. Order Allowing Appeal and Fixing Amount of Bond.
6. Petition for Writ of Error.
7. Order Allowing Writ of Error.
8. Writ of Error.
9. Citation on Writ of Error.
10. Stipulation to File Bond in Appellate Court.
11. Defendant's Bill of Exceptions.
12. Citation on Appeal.
13. Praecipe. [56]

Said transcript to be prepared as required by law, and the rules of this court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

Z. R. CHENEY,

Attorney for Alaska Salmon Company, Defendant  
and Appellant.

Filed in the District Court, District of Alaska,  
First Division. Dec. 23, 1915. J. W. Bell, Clerk.  
By ———, Deputy. [57]

**[Certificate of Clerk U. S. District Court to  
Transcript of Record.]**

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1407-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY,

Defendant.

United States of America,  
Territory of Alaska,—ss.

I, J. W. Bell, Clerk of the District Court for the Territory of Alaska, Division Number One, hereby certify that the foregoing and hereto annexed 57 pages of typewritten matter, numbered from one to 57, inclusive, constitutes a full, true and correct copy of the record, and the whole thereof, as per the praecipe, of the plaintiff in error, on file herein and made a part hereof, in the cause wherein the Alaska Salmon Company is plaintiff in error, and the Territory of Alaska is defendant in error, No. 1407-A, as the same appears of record and on file in my office, and that the said record is, by virtue of the writ of error and citation issued in this cause, and the return thereof, in accordance therewith.

I do further certify that this transcript was prepared by me in my office, and the cost of preparation, examination, and certificate, amounting to Forty-two and 10/100 Dollars (\$42.10), has been paid to me by counsel for plaintiff in error.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 23d day of December, 1915.

[Seal]

J. W. BELL,

Clerk of the District Court for the Territory of Alaska.

By \_\_\_\_\_,  
Deputy.

[Endorsed]: No. 2720. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Salmon Company, a Corporation, Plaintiff in Error and Appellant, vs. The Territory of Alaska, Defendant in Error and Appellee. Transcript of Record. Upon Writ of Error to and Upon Appeal from the United States District Court of the District of Alaska, Division No. 1.

Filed December 29, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

[Endorsed]: Printed Transcript of Record.  
Filed Jan. 20, 1916. F. D. Monckton, Clerk.

No. 2720

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

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Upon Writ of Error to and Upon Appeal from the United States  
District Court of the District of Alaska,  
Division No. 1.

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PROCEEDINGS HAD IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1407-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA SALMON COMPANY, a Corporation,  
Defendant.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS:

That the Alaska Salmon Company, a corporation, as principal, and William Timson and A. K. Tichenor, as sureties, are held and firmly bound unto the territory of Alaska, the plaintiff above named, in the sum of six thousand (6,000) dollars, to be paid to said plaintiff to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, firmly by these presents.

SEALED with our seals, this 10th day of February, 1916.

THE CONDITION of this obligation is such that whereas the above-named defendant, Alaska Salmon Company, a corporation, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause in the District Court for the Territory of Alaska, Division Number One;

NOW, THEREFORE, if the above-named defendant shall prosecute said writ of error to effect, and answer all costs and damages, if it shall fail to

make good its appeal, then this obligation shall be void; otherwise to remain in full force and effect.

ALASKA SALMON COMPANY.

By GEO. H. COLLINS,  
President, Principal.  
WILLIAM TIMSON,  
A. K. TICHENOR,  
Sureties.

Taken and acknowledged before me, this 10th day of February, 1916.

[Seal] CHARLES EDELMAN,  
Notary Public, in and for the City and County of  
San Francisco, State of California.

My commission expires April 7, 1918.

[Endorsed]: Bond on Writ of Error. Filed Feb.  
10, 1917. F. D. Monckton, Clerk.

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At a stated term, to wit, the October term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco in the State of California, on Tuesday, the seventh day of March, in the year of our Lord one thousand nine hundred and sixteen. Present; The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2720.

ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

**Order of Submission.**

ORDERED, cause and appeal argued by Messrs. Z. R. Cheney, E. S. McCord, and Warren Gregory, counsel for the plaintiff in error and appellant, and by Mr. J. H. Cobb, counsel for the defendant in error and appellee, and submitted to the Court for consideration and decision.

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At a stated term, to wit, the October term A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the fifth day of September, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge.

IN THE MATTER OF THE FILING OF CERTAIN OPINIONS AND OF THE FILING AND RECORDING OF CERTAIN JUDGMENTS AND DECREES.

By direction of the Honorable William B. Gilbert, Erskine M. Ross, and William H. Hunt, Circuit

Judges, before whom the cases were heard, ORDERED, that the typewritten opinion this day rendered by this court in each of the following entitled causes be forthwith filed by the clerk, and that a judgment or decree be filed and recorded in the minutes of this court, in each of the causes in accordance with the opinion filed therein: \* \* \* Alaska Salmon Company, a Corporation, Plaintiff in Error and Appellant, vs. The Territory of Alaska, Defendant in Error and Appellee, No. 2720. \* \* \*

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. 2720.

ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

**Opinion U. S. Circuit Court of Appeals.**

Upon Writ of Error to, and upon Appeal from, the  
United States District Court of the District of  
Alaska, Division No. 1.

Z. R. CHENEY, of Juneau, Alaska, WARREN  
GREGORY, of San Francisco, Cal., and E. S.  
McCORD and W. H. BOGLE, both of Seattle,  
Wash., for Plaintiff in Error and Appellant;

J. H. COBB, Chief Counsel for the Territory of  
Alaska, of Juneau, Alaska, for Defendant in  
Error and Appellee.

Before GILBERT, ROSS and HUNT, Circuit  
Judges.

HUNT, Circuit Judge:

This case was submitted to the District Court of the Territory of Alaska, Division No. 1, upon an agreed statement of facts, and thereafter judgment was given in favor of the territory, and from such judgment writ of error has been prosecuted.

By the facts agreed upon it appears that the Alaska Salmon Company is engaged in the business of annually operating a salmon cannery and manufacturing canned salmon in Alaska; that during the year 1915, it also maintained and operated at its cannery gill-nets; that since the Act of Congress of June 26, 1906, the plaintiff in error has paid the license taxes on its business and output as therein provided, and has complied with all the provisions of Chapter 3 of Title VII, of the Compiled Laws of Alaska relating to fish and fisheries; that the legislature of Alaska, by an Act approved May 1, 1913, and by another Act approved April 29, 1915, imposed licenses and taxes.

The questions presented by the brief of appellant may be stated as follows: (1) The plaintiff in error having complied with all the conditions and paid the license fees imposed by the Acts of Congress, is it obliged to apply for a license and pay the license fees and taxes imposed by the Act of the legislature of Alaska approved May 1, 1913? (2) Plaintiff in error having complied with all the conditions and paid the license fees imposed by the Act of Congress just hereinbefore referred to, is it obliged to apply

for a license and pay the license fees and taxes imposed by the Act of the legislature of Alaska approved April 29, 1915? (3) Is the plaintiff in error, as the owner of a private salmon hatchery, and also engaged in the business of canning salmon in Alaska, by virtue of certificates issued to it by the Secretary of Commerce & Labor for salmon fry liberated from its hatcheries, entitled by virtue of such certificates to have the same applied *pro tanto* in payment of all license fees and charges not only imposed by the Act of Congress referred to, but also by the Acts of the legislature of Alaska?

We need not pass upon the last question, because the agreed statement of facts gives no information upon the matter, nor was it regarded by the lower court as involved in the case.

The Act of the legislature of the Territory of Alaska approved May 1, 1913, was entitled, "An Act to establish a system of taxation, create revenue, and provide for collection thereof for the Territory of Alaska, and for other purposes." Section 1 provided "that any \* \* \* corporation \* \* \*, prosecuting or attempting to prosecute any of the following lines of business \* \* \* shall first apply for and obtain a license so to do from the district court \* \* \* in said Territory, and pay for said license for the respective lines of business and trades, as follows, to wit: Fisheries, salmon canneries, seven cents per case on sockeye and king salmon; one-half cent a case on hump-back, coho, or chum salmon." Many other license charges were fixed by this Act which it is unnecessary to refer to,

because they are immaterial to the case under consideration.

On April 29, 1915, the legislature passed an Act to establish a system of taxation, create revenue, and provide for collection thereof, for the Territory of Alaska, and for other purposes, and to amend an Act entitled, "An Act to establish a system of taxation, create revenue, and provide for collection thereof for the Territory of Alaska, and for other purposes," approved May 1, 1913. This last referred to Act provided that application must be made for license to carry on certain designated lines of business (Section 2). License taxes for the business of carrying on a fishery as provided for in the sixth subdivision of Section 1 of the Act were, for salmon canneries, four cents per case on king and reds or sockeye; two cents per case on medium reds; one cent per case on all others; and by subdivision 7, for salteries license should be two and one-half cents per one hundred pounds on all fish salted or mild cured, except herring. And on fish-traps there should be paid one hundred dollars per annum for fixed or floating traps; and for gill-nets, one dollar per hundred fathoms or fraction thereof.

If the plaintiff in error has to pay the tax required by the Act of 1913, for the years 1913 and 1914 the sum of \$4,643.60 will be paid upon salmon packed in those years, and for the year 1915 it would have to pay for salmon packed, \$1,158.28, and for gill-nets used, \$131.75.

Plaintiff in error has paid the license fees imposed by the Act of Congress of June 26, 1906, but has

declined to apply for or obtain a license from the Territory of Alaska as required by the Acts of May 1, 1913, and April 29, 1915, basing its refusal to pay upon the ground that having paid the taxes imposed by the Act of Congress, it was not obligated to pay the Territory of Alaska upon the same output.

We believe that the Act of June 26, 1906, providing for certain license fees and taxes upon the output of fish canneries and regulating the control of the fish industry being subsequent to the Act of June 6, 1900, which provided for a tax on the business and trade, was the controlling law in force at the time of the passage of the Organic Law. But we believe that the legislature was within its authority in passing the Act of May 1, 1913, so far as it provided for obtaining a license and for a tax upon the carrying on of the business of a salmon cannery of four cents per case on king and reds or sockeye, and two cents per case on medium reds, and one cent per case on all others. And we also hold that the legislature of the Territory was within its power in passing the Act of April 29, 1915, which also dealt with license fees and taxes upon carrying on certain kinds of business, including canneries, gill-nets and fish-traps.

In *Alaska-Pacific Fisheries v. Territory of Alaska* (No. 2709), *ante*, we have considered the principal legal questions here involved, and upon the authority of that case the judgment of the lower court will be affirmed.

So ordered.

[Endorsed]: Opinion. Filed Sept. 5, 1916. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

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*United States Circuit Court of Appeals for the Ninth Circuit.*

No. 2720.

ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,  
vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

**Judgment U. S. Circuit Court of Appeals.**

In error to and upon appeal from the District Court of the United States for the District of Alaska, Division No. 1.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Alaska, Division No. 1, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the defendant in error and appellee and against the plaintiff in error and appellant.

It is further ordered and adjudged by this Court that the defendant in error and appellee recover against the plaintiff in error and appellant for its costs herein expended, and have execution therefor.

[Endorsed]: Judgment. Filed and entered Sept. 5, 1916. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

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At a stated term, to wit, the October term A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the ninth day of October, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 2720.

ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

**Order Denying Petition for Rehearing.**

On consideration thereof, and by direction of the Honorable William B. Gilbert, Erskine M. Ross and William H. Hunt, Circuit Judges, before whom the case was heard, it is ORDERED, that the petition, filed October 4, 1916, on behalf of the plaintiff in error and appellant for a rehearing of the above-entitled cause be, and hereby is denied.

At a stated term, to wit, the October term A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Wednesday, the eleventh day of October, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2720.

ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,  
vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

**Order Staying Issuance of Mandate Under Rule 32  
Until Petition to Supreme Court U. S. for Writ  
of Certiorari is Disposed of, on Condition That  
Such Petition be Docketed Within Forty (40)  
Days from and After the 11th Instant.**

Upon motion of Mr. Herman Weinberger, on behalf of counsel for the plaintiff in error and appellant, and good cause therefor appearing, it is ORDERED, that the mandate under rule 32 of this court in the above-entitled cause be, and hereby is stayed until the petition of the plaintiff in error and appellant

to the Supreme Court of the United States for the issuance of a writ of certiorari herein, be disposed of by the said Supreme Court, on condition that the said petition be docketed in the said Supreme Court within forty (40) days from and after the 11th instant.

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At a stated term, to wit, the October term A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the fourteenth day of November, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2720.

ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,  
vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

**Order Staying Issuance of Mandate.**

Upon motion of Mr. Herman Weinberger, on behalf of counsel for the plaintiff in error and appellant, and good cause therefor appearing, it is ORDERED, that the mandate of this court under rule 32 in the above-entitled cause be, and hereby is stayed until

the petition to be made on behalf of the plaintiff in error and appellant to the Supreme Court of the United States for the issuance of a writ of certiorari herein, be disposed of by the said Supreme Court, on condition that said petition be docketed in the said Supreme Court within ten (10) days from and after the 18th instant.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

No. 2720.

ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,  
vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

**Order Staying Issuance of Mandate Under Rule 32  
Until Petition to Supreme Court of the United  
States for Writ of Certiorari is Disposed of on  
Condition That Such Petition be Docketed Ten  
Days from and After the 28th Instant.**

Upon application of Mr. Herman Weinberger, on behalf of counsel for the plaintiff in error and appellant, and good cause therefor appearing,—

IT IS ORDERED that the Mandate under Rule 32 of this court in the above-entitled cause be, and hereby is, stayed until the petition of the plaintiff in error and appellant to the Supreme Court of the United States for the issuance of a writ of certiorari herein be disposed of by the said Supreme Court, on condition that the said petition be docketed in the

said Supreme Court within ten days from and after the 28th instant.

Dated November 25, 1916.

WM. W. MORROW,

WM. H. HUNT,

United States Circuit Judges.

[Endorsed]: Order Staying Issuance of Mandate, etc. Filed Nov. 25, 1916. F. D. Monckton, Clerk.

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At a stated term, to wit, the October term A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the fourth day of December, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2720.

ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,  
vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

**Order Staying Issuance of Mandate Under Rule 32  
Until Petition to Supreme Court U. S. for Writ  
of Certiorari is Disposed of, on Condition That  
Such Petition be Docketed Within Five (5)  
Days from and After the 8th Instant.**

On consideration of the application of Mr. Her-

man Weinberger, on behalf of counsel for the plaintiff in error and appellant, and good cause therefor appearing, it is ORDERED, that the mandate of this court under rule 32 in the above-entitled cause be, and hereby is stayed until the petition to be made on behalf of the plaintiff in error and appellant to the Supreme Court of the United States for the issuance of a writ of certiorari herein, be disposed of by the said Supreme Court, on condition that the said petition be docketed in the said Supreme Court within five (5) days from and after the 8th instant.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

No. 2720.

ALASKA SALMON COMPANY, (a Corporation),  
Plaintiff in Error,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error.

**Petition for Writ of Error and Supersedeas.**

The above-named plaintiff in error, Alaska Salmon Company, a corporation, deeming itself aggrieved by the judgment of the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, entered in a cause entitled, "Alaska Salmon Company, a Corporation, Plaintiff in Error, versus The Territory of Alaska, Defendant in Error," on or about the 5th day of September, 1916, comes now by its attorneys, Warren Gregory, George H. Whipple and E. S. McCord, and petitions said United States Cir-

cuit Court of Appeals for the Ninth Circuit for an order allowing said Alaska Salmon Company to prosecute a Writ of Error, and have the same allowed and issued from the Supreme Court of the United States to said United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and that a transcript of the record, proceedings, documentary exhibits and papers in the case, upon which said judgment was made, duly authenticated, may be sent to said Supreme Court of the United States, and also that an order may be made by this Honorable Court fixing the amount of the bond which the said plaintiff in error shall give and furnish upon said Writ of Error, and that upon the filing of such bond, all proceedings in said cause in the United States Circuit Court of Appeals for the Ninth Circuit and in the District Court for the Territory of Alaska be suspended and stayed until the determination of such Writ of Error by the Honorable the Supreme Court of the United States.

And in this behalf your petitioner shows that said judgment of said United States Circuit Court of Appeals for the Ninth Circuit was rendered in an action at law, and that the amount of the controversy exceeds one thousand (1,000) dollars, besides costs, and amounts to approximately the sum of six thousand (6,000) dollars, and that the judgment of the said United States Circuit Court of Appeals for the Ninth Circuit is not made final by the provisions of the Act of Congress of the United States of America entitled, "An Act to codify, revise and amend the

laws relating to the Judiciary," approved March 3, 1911, as amended, and that plaintiff in error is entitled to said Writ of Error under the provisions of Section 241 of said Act and of Section 128 thereof, as amended by the Act of Congress approved January 28, 1915, entitled "An Act to amend an Act entitled 'An Act to codify, revise and amend the laws relating to the Judiciary,' " approved March 3, 1911.

And your petitioner will ever pray.

WARREN GREGORY,  
GEO. H. WHIPPLE,  
E. S. McCORD,  
Attorneys for Petitioner.

State of California,

City and County of San Francisco,—ss.

Otto Irving Wise, being first duly sworn, deposes and says: That he is an officer, to wit, secretary of Alaska Salmon Company, a corporation, plaintiff in error in the above-entitled action, and makes this verification on its behalf; that he has read the foregoing Petition and knows the contents thereof, and that the matters and things therein set forth are true of his own knowledge, and in particular affiant states that the amount involved in said cause exceeds one thousand (1,000) dollars, besides costs.

OTTO IRVING WISE.

Subscribed and sworn to before me this 26th day of January, 1917.

[Seal]

MAURICE FINN,  
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Petition for Writ of Error and Supersedeas. Filed Jan. 26, 1917. F. D. Monckton, Clerk.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

No. 2720.

ALASKA SALMON COMPANY (a Corporation),  
Plaintiff in Error,  
vs.

THE TERRITORY OF ALASKA,  
Defendant in Error.

**Assignment of Errors.**

The plaintiff in error complains of errors in the proceedings of the United States Circuit Court of Appeals for the Ninth Circuit, in said cause, and in the opinion and judgment rendered, made and entered therein in the above-entitled court on the 5th day of September, 1916, and assigns the following as the errors complained of:

First. The Court erred in holding that the plaintiff in error, having complied with all the conditions and paid the license fees imposed by the Acts of Congress set out in the Agreed Statement of Facts, is also obliged to apply for a license and pay the license fees and taxes imposed by the Act of the Legislature of Alaska approved May 1, 1913, also set out in said Statement.

Second. The Court erred in holding that the plaintiff in error, having complied with all the conditions and paid the license fees imposed by the Act

of Congress of June 26, 1906, set out in the Agreed Statement of Facts, is also obliged to apply for a license and pay the license fees and taxes imposed by the Act of the Legislature of Alaska approved April 29, 1915, also set out in said Statement.

Third. The Court erred in holding that ~~the~~ plaintiff in error, as the owner of a private salmon hatchery and also engaged in the business of canning salmon in Alaska, by virtue of certificates issued to it by the Secretary of Commerce and Labor of the United States, for salmon fry liberated from its hatcheries, was not entitled by virtue of such certificates to have the same applied *pro tanto* in payment of all license fees and charges not only imposed by the Acts of Congress, but also by the Acts of the Legislature of Alaska, referred to in the Agreed Statement of Facts.

Fourth. The Court erred in not holding that Sections 6 and 9 of the Act of April 29, 1915, under which this suit is prosecuted, are void and invalid for the reasons:

(a) That the sections of said Act above mentioned alter, modify and repeal the Act of June 26, 1906, which said Act is set forth in Paragraph VI of the Agreed Statement of Facts;

(b) Because under the Act of August 24, 1912, which said Act is set forth in Paragraph IV of the Agreed Statement of Facts, the legislative assembly in the Territory of Alaska is prohibited from passing any laws relating to fish or fisheries in the Territory of Alaska;

(c) Because no assessment whatever was made

upon the property of defendant taxed under the Act of April 29, 1915, set forth in Paragraph V of said Agreed Statement of Facts, prior to the levying of the tax.

Fifth. The Court erred in holding that the plaintiff in error is liable for any license taxes for the years 1913-1914, for the reason that the said Act of May 1, 1913, passed by the Legislature of the Territory of Alaska and designated as House Bill No. 96, does not provide for any civil liability.

Sixth. The Court erred in holding that the said Act of the Territorial Legislature passed May 1, 1913, was not repugnant to the provisions of the Organic Act of the Territory of Alaska, it having been urged by the plaintiff in error that the tax sought to be collected under the provisions of that Act did not comply with the requirements of Section 9 of the Organic Act for the Territory, providing that "All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the actual value thereof." In this regard the United States Circuit Court of Appeals erred in holding and deciding that the tax sought to be collected under this Act of the Territorial Legislature was a license tax, and that being a license tax it was not necessary to its validity that it should comply with all or any of the provisions of Section 9 of the Organic Act above referred to. The United States Circuit Court of Appeals also erred in holding and deciding that the tax in question was a license tax and not a property tax.

Seventh. The Court erred in holding and deciding that plaintiff in error was liable for taxes under the Act of 1915 of the Territorial Legislature, notwithstanding the fact that it had paid its taxes under the Act of June 26, 1906, which provides, "That every person, company, or corporation carrying on the business of canning, curing, or preserving fish or manufacturing fish products . . . shall, in lieu of all other license fees and taxes therefor and thereon, pay license taxes on their said business and output as follows": Here the Act designates the amounts to be paid, which was paid by the plaintiff in error, said plaintiff in error being engaged in the business of canning fish and using fish-traps as a mere appliance in connection with the conduct of such business.

WHEREFORE, said plaintiff in error, Alaska Salmon Company, prays that the aforesaid judgment and decree made, rendered and entered in and by said United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, on the 5th day of September, 1916, affirming the judgment rendered in favor of defendant in error, plaintiff below, in said District Court for the Territory of Alaska, be reversed, and for such other relief as may be proper.

WARREN GREGORY,  
GEO. N. WHIPPLE,  
E. S. McCORD,

Attorneys for Plaintiff in Error, Alaska Salmon  
Company.

[Endorsed]: Assignment of Errors. Filed Jan. 26, 1917. F. D. Monekton, Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. 2720.

ALASKA SALMON COMPANY (a Corporation),  
Plaintiff in Error,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error.

**Order Allowing Writ of Error and Fixing Amount of  
Supersedeas Bond.**

Upon the filing of the petition of the above-named Alaska Salmon Company, a corporation, for a Writ of Error, together with an Assignment of Errors:

IT IS ORDERED that a Writ of Error as prayed for in said petition be, and it is hereby, allowed to said Alaska Salmon Company to have reviewed by the Supreme Court of the United States the judgment heretofore entered in the above-entitled cause and the proceedings and the trial of said cause prior thereto, and that the amount of the bond to be filed in this court by said Alaska Salmon Company, in connection with the Writ of Error prayed for be, and is hereby, fixed in the sum of eight thousand, five hundred (8,500) dollars; AND IT IS HEREBY ORDERED that upon the filing of an approved bond in said amount, all further proceedings in said United States Circuit Court of Appeals for the Ninth

Circuit in said cause shall be suspended and stayed until the determination of such Writ of Error by the Supreme Court of the United States.

Dated this 26th day of January, 1917.

WILLIAM H. HUNT,  
Circuit Judge.

[Endorsed]: Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond. Filed Jan. 26, 1917. F. D. Monckton, Clerk.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. 2720.

ALASKA SALMON COMPANY, (a Corporation),  
Plaintiff in Error,  
vs.

THE TERRITORY OF ALASKA,  
Defendant in Error.

**Supersedeas Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS:

That we, Alaska Salmon Company, a corporation, plaintiff in error in the above-entitled cause, as principal, and United States Fidelity & Guaranty Company, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland for the purpose of making and guaranteeing and becoming surety upon bonds or undertakings required or authorized by law, and as such corporation authorized to do business, and doing business, in the State of California and in the Territory of Alaska

and elsewhere, as Surety, are held and firmly bound unto the Territory of Alaska, defendant in error in the above-entitled cause, in the sum of eight thousand, five hundred (8,500) dollars, to be paid to the said the Territory of Alaska, defendant in error, and for the payment of which sum well and truly to be made we bind ourselves and each of us and our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of January, 1917.

WHEREAS lately at a regular term of the District Court of the United States for the Territory of Alaska, sitting at Juneau in said district, in a suit pending in said court between the territory of Alaska, as plaintiff, and Alaska Salmon Company, a corporation, as defendant, and being cause No. 1407-A on the law docket of said court, final judgment was rendered against said Alaska Salmon Company for the sum of five thousand, nine hundred and thirty-three and 63/100 (5,933.63) dollars, with interest on one thousand, two hundred and ninety and 3/100 (1,290.03) dollars at the rate of eight (8) per cent per annum from and after January 15, 1916, and on four thousand, six hundred and forty-three and 60/100 (4,643.60) dollars from and after December 22, 1915, and for costs of suit; and

WHEREAS said Alaska Salmon Company thereafter obtained a Writ of Error returnable to the United States Circuit Court of Appeals to reverse the judgment of said United States District Court

in said suit, and filed said Writ in the clerk's office of said District Court; and

WHEREAS said cause thereafter duly came on to be heard on said Writ of Error in said United States Circuit Court of Appeals for the Ninth Circuit, and on the 5th day of September, 1916, said Court rendered its opinion and made and entered its judgment affirming said judgment entered in said cause in favor of said plaintiff, the Territory of Alaska, in said United States District Court; and

WHEREAS said Alaska Salmon Company has obtained a Writ of Error returnable to the Supreme Court of the United States, and filed the said Writ in the clerk's office of said United States Circuit Court of Appeals, to reverse said judgment of said United States Circuit Court of Appeals in the said cause, and a citation has been issued in said court directed to said the Territory of Alaska, defendant in error, citing it to be and appear before the Supreme Court of the United States to be held in the city of Washington, in the District of Columbia, according to law, within sixty days from the date hereof;

NOW, the condition of the above obligation is such that if said Alaska Salmon Company, a corporation, shall prosecute said Writ of Error last-mentioned to effect, and answer all damages and costs if it fail to make its pleading good, then the above obligation

shall be void; otherwise the same shall be and remain in full force and effect.

[Seal] ALASKA SALMON COMPANY.

By C. P. HALE,  
President.

And OTTO IRVING WISE,  
Secretary.

[Seal] UNITED STATES FIDELITY &  
GUARANTY COMPANY.

By H. V. D. JOHNS,  
Attorney in Fact.  
And BRADLEY CARR,  
Attorney in Fact.

State of California,

City and County of San Francisco,—ss.

On this 26th day of January, in the year one thousand nine hundred and seventeen, before me, M. J. Cleveland, a notary public in and for the city and county of San Francisco, residing therein, duly commissioned and sworn, specially appeared H. V. D. Johns and Bradley Carr, known to me to be the persons whose names are subscribed to the within instrument as the attorneys in fact of the United States Fidelity & Guaranty Company, and acknowledged to me that they subscribed the name of the United States Fidelity & Guaranty Company thereto as principal and their own names as attorneys in fact.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and

year in this certificate first above written.

[Seal]

M. J. CLEVELAND,

Notary Public in and for the City and County of  
San Francisco, State of California.

State of California,

City and County of San Francisco,—ss.

On this 26th day of January, in the year one thousand nine hundred and seventeen, before me, Maurice Finn, a notary public in and for the city and county of San Francisco, residing therein, duly commissioned and sworn, specially appeared C. P. Hale, known to me to be the president, and Otto Irving Wise, known to me to be the secretary, of Alaska Salmon Company, the corporation described in, and that executed the within instrument, and also known to me to be the persons who executed said instrument on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and year in this certificate first above written.

[Seal]

MAURICE FINN,

Notary Public in and for the City and County of  
San Francisco, State of California.

The above and foregoing Bond upon Writ of Error is hereby approved, and the same shall operate as a supersedeas.

Dated, January 26th, 1917.

WILLIAM H. HUNT,

Circuit Judge of the Ninth Judicial Circuit.

[Endorsed]: Supersedeas Bond on Writ of Error, and Order of Approval. Filed Jan. 26, 1917. F. D. Monckton, Clerk.

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*United States Circuit Court of Appeals for the  
Ninth Circuit.*

No. 2720.

ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,  
vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

**Praeipie for Transcript of Record on Return to Writ  
of Error from Supreme Court of United States.**

To the Clerk of the Said Court:

Sir: Please make and furnish me with a certified transcript of the record (including the proceedings had in said Circuit Court of Appeals), and not less than thirty uncertified copies thereof, for use on Writ of Error from the Supreme Court of the United States in the above-entitled cause, the said transcript to consist of a copy of the following:

Printed transcript of record on which the cause was heard in said Circuit Court of Appeals, to which will be added a printed copy of the following entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz.:

Order of Submission, entered Mar. 7, 1916;

Order Directing Filing of Opinion etc., entered Sept. 5, 1916;

Opinion, filed Sept. 5, 1916;

Judgment, filed and entered Sept. 5, 1916;

Order Denying Petition for Rehearing, entered Oct. 9, 1916;

Order Staying Issuance of Mandate, entered Oct. 11, 1916;

Order Staying Issuance of Mandate, entered Nov. 14, 1916;

Order Staying Issuance of Mandate, entered Dec. 4, 1916; and

The following papers on Writ of Error returnable in the Supreme Court of the United States:

Petition for Writ of Error and Supersedeas, filed Jan. 26, 1917;

Assignment of Errors, filed Jan. 26, 1917;

Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond, filed Jan. 26, 1917;

Supersedeas Bond on Writ of Error, filed Jan. 26, 1917;

Praeipce for Transcript of Record; filed Feb. 23, 1917;

Writ of Error, filed Jan. 26, 1917;

Citation on Writ of Error, filed Feb. 16, 1917;

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record.

Please prepare thirty or more uncertified copies of said record by printing thirty or more copies of the above-entitled proceedings that were had and papers that were filed in said cause in said Circuit Court of Appeals and by binding one of the latter printed copies of said proceedings, etc., at the end of each of the thirty or more extra copies of the

printed transcript of record on which said cause was heard in said Circuit Court of Appeals.

WARREN GREGORY,  
Z. R. CHENEY,  
GEO. N. WHIPPLE,  
E. S. McCORD,

Attorneys for Plaintiff in Error and Appellant.

Service of the within praecipe is admitted this 13th day of February, A. D. 1917.

GEO. B. GRIGSBY,

Attorney for Defendant in Error and Appellee.

[Endorsed]: Praecipe for Transcript of Record on Return to Writ of Error from Supreme Court, U. S. Filed Feb. 23, 1917. F. D. Monekton, Clerk.

*United States Circuit Court of Appeals for the  
Ninth Circuit.*

No. 2720.

ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error and Appellant,  
vs.

THE TERRITORY OF ALASKA,  
Defendant in Error and Appellee.

**Certificate of Clerk U. S. Circuit Court of Appeals  
to Transcript of Record Upon Return to Writ  
of Error from the Supreme Court of the United  
States.**

I, Frank D. Monckton, as clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and twelve (112) pages, numbered from and including 1 to and including (112), to be a true copy of the record and of the assignment of errors, and of all proceedings had in the above-entitled case, made up pursuant to praecipe filed by counsel for the plaintiff in error and appellant on the 23d day of February, A. D. 1917, under Rule 8 of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office, and that the same constitute the transcript of record and return to the writ of error from the Supreme Court of the United States in the above-entitled cause, as made up and certified pursuant to said praecipe.

ATTEST my hand and the seal of the said United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 29th day of February, A. D. 1917.

[Seal]

F. D. MONCKTON,

Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. 2720.

ALASKA SALMON COMPANY (a Corporation),  
Plaintiff in Error,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error,

**Writ of Error.**

United States of America,—ss.

The President of the United States of America to  
the Honorable the Judges of the United States  
Circuit Court of Appeals in and for the Ninth  
Circuit, GREETING:

Because in the record and proceedings, as also in  
the rendition of the judgment of a plea which is in  
the said Circuit Court of Appeals before you, or  
some of you, and because of the order affirming the  
judgment of the District Court for the Territory of  
Alaska, Division No. 1. which said judgment, deci-  
sion and order were made in the said cause, wherein  
the Alaska Salmon Company, a corporation, is plain-  
tiff in error, and the Territory of Alaska is defend-  
ant in error, which said cause involves the construc-  
tion and application of the Constitution of the  
United States and of a law of the United States, and  
in which a law of the Territory of Alaska is claimed  
to be in contravention of the Constitution of the  
United States or of a law of the United States, and

the decision of the United States Circuit Court of Appeals for the Ninth Circuit was against the title, right, privilege and exemption specifically set up and claimed by plaintiff in error under the Constitution of the United States or under a law thereof, and in favor of the validity of the law of the Territory of Alaska, a manifest error has appeared to the great damage of the said Alaska Salmon Company as by the record herein appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ so that you have the same at Washington within sixty days from the date hereof in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States this 26th day of January, 1917.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the Clerk's Office at San Francisco, California, on

the day and year last-above written.

[Seal]

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

Allowed this 26th day of January, 1917.

WILLIAM H. HUNT,

Circuit Judge.

[Endorsed]: Writ of Error. Filed Jan. 26, 1917.

F. D. Monckton, Clerk.

**Return to Writ of Error.**

The answer of the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

As within we are commanded, we certify, under  
the seal of our said Circuit Court of Appeals, in a  
certain schedule to this writ annexed, the record and  
all proceedings of the plaint whereof mention is  
within made, with all things touching the same, to  
the Supreme Court of the United States, within  
mentioned, at the day and place within contained.

We further certify that a copy of this writ has  
been duly lodged for the within named defendant in  
error and appellee.

Dated at San Francisco, California, this 26th day  
of February, A. D. 1917.

THE JUDGES OF THE UNITED  
STATES CIRCUIT COURT OF AP-  
PEALS FOR THE NINTH CIRCUIT.

[Seal]

By F. D. MONCKTON,

Clerk.



*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. 2720.

ALASKA SALMON COMPANY, a Corporation,  
Plaintiff in Error,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error.

**Citation on Writ of Error.**

United States of America,—ss.

The President of the United States of America, to  
The Territory of Alaska, GREETING:

YOU ARE HEREBY NOTIFIED that in a certain cause in the United States Circuit Court of Appeals, for the Ninth Circuit, wherein Alaska Salmon Company, a corporation, is plaintiff in error, and the Territory of Alaska the defendant in error, the said plaintiff in error has prayed a Writ of Error, to the Supreme Court of the United States, from the judgment of said United States Circuit Court of Appeals, in said cause, entered on or about the 5th day of September, 1916, and that said plea has been allowed.

WHEREFORE you are hereby cited and admonished to appear in the Supreme Court of the United States, to be held at the city of Washington in the District of Columbia, on the 26th day of March, 1917, being within sixty days from the date hereof, to show cause why the judgment rendered against

the said plaintiff in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. HUNT,  
United States Circuit Judge, for the Ninth Circuit,  
this 26th day of January, 1917.

WILLIAM H. HUNT,  
United States Circuit Judge.

Received a copy of the within citation on writ of error and copy of writ of error this 5th day of February, 1917.

GEORGE B. GRIGSBY,  
Counsel for the Territory of Alaska.

[Endorsed]: Citation on Writ of Error. Filed  
Feb. 16, 1917. F. D. Monckton, Clerk.

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IN THE  
SUPREME COURT OF THE UNITED STATES.  
OCTOBER TERM, 1918.

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**No. 151.**

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ALASKA SALMON COMPANY (a Corporation),  
*Plaintiff in Error,*

*vs.*

THE TERRITORY OF ALASKA, *Defendant in Error.*

---

**BRIEF OF PLAINTIFF IN ERROR.**

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The questions involved in this case are substantially similar to those in *Alaska-Pacific Fisheries vs. Territory of Alaska*, Nos. 117 and 118 this term, which were orally argued on December 19 and 20, 1918. This case is therefore respectfully submitted upon the briefs and arguments in those cases and upon the following printed argument:

**Statement of the Case.**

The Alaska Salmon Company has owned and operated a salmon cannery in Alaska since the year 1901.

Under the provisions of an Act of the Legislature of Alaska, approved May 1, 1913, a license tax for the years 1913 and 1914 was imposed upon the petitioner in the sum of \$4643.60 (Record 65) and under the provisions of an Act of the Territory of Alaska, approved April 29, 1915, another license tax for salmon packed by the petitioner was imposed in the sum of \$1158.28 and for gill nets used, \$131.75 (Record 58).

The plaintiff in error has up to date, including the years 1913-15, inclusive, paid all the license taxes imposed by the Act of Congress of June 26, 1906, and has complied with all the other provisions of said Congressional Act, and the license fees from taxes so paid by petitioner have been accepted by the United States under the provisions of said Act of June 26, 1906 (Record 57).

The plaintiff in error, however, declined to apply for or obtain a license from the Territory of Alaska, as required by the Acts of 1913 and 1915 under claim that it having paid the taxes imposed by the Act of Congress, it was not obligated to again pay the Territory for the same output. By reason of the refusal of the plaintiff in error to so take out a

license for its said business it was deemed guilty of a misdemeanor, and thereupon the plaintiff in error and the Territory of Alaska submitted the controversy at issue upon an agreed statement of facts, under the provisions of Chapter 28 of the Code of Civil Procedure of the District of Alaska. Upon this agreed statement of facts the cause was submitted to the District Court of the Territory of Alaska, Division No. 1, and a judgment given in favor of the Territory for the amounts above stated (Record 4). From this judgment a writ of error and appeal was prosecuted to the Circuit Court of Appeals for the Ninth Circuit. On the 5th of September, 1916, judgment was entered in the Circuit Court of Appeals affirming the judgment of the trial Court (Record 90). A petition for a rehearing was filed by the plaintiff in error and on the 4th of October, 1916, denied (Record 91). On the 11th of October, 1916, an order was entered by the Circuit Court of Appeals staying the issuance of the mandate until the petition for a writ of certiorari to this Court could be heard. Such petition having been applied for and denied, writ of error was granted and the case docketed in this Court on March 14, 1917.

This case involves in its most general aspect consideration of the power of the Legislature of the Territory of Alaska to impose and collect taxes or license charges upon the output and appliances of salmon canneries in the Territory.

The solution of the question depends upon the legislative history affecting the subject, and it may be of service to the Court here to state in the briefest possible manner such historical record.

## I.

On June 26, 1906, Congress enacted a law entitled: "An Act for the Protection and Regulation of the Fisheries of Alaska". This Act is printed in full in the record (pages 46-54). It is devoted to minute regulations concerning the method of procuring, canning, salting or curing fish, and among other things provides that every person, company, or corporation carrying on the business of canning fish within the Territory of Alaska shall, in lieu of all other license fees and taxes therefor and thereon, pay license taxes on their said business and output as follows: "Canned salmon, four cents per case; pickled salmon, ten cents per barrel; salt salmon in bulk, five cents per one hundred pounds; fish oil, ten cents per barrel; fertilizer, twenty cents per ton." This law is still in force, unless it has been amended by the Organic Act and the Acts of the Territorial Legislature, hereinafter discussed.

## II.

On August 12, 1912, Congress enacted the organic law of the Territory, by which a legislative as-

sembly was created. This Act differs from previous acts passed by Congress for the creation of governmental agencies for the various territories in the country, in that the powers of the proposed Alaskan assembly are in many respects expressly limited, whereas the usual expression in the Organic Acts of the Territories has been that "the legislative power of a Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States locally applicable. The Organic Act is set out in full in the record (pages 22-36), and Section 3 thereof (Record pp. 23-24) is particularly concerned with the presentation of this case.

### III.

On May 1, 1913, the newly created legislative assembly of the Territory enacted a law designated as "House Bill No. 96" (Record pp. 59-64). By this bill any person, corporation, or company prosecuting the line of business of conducting fisheries was made liable to pay for a license so to do; seven cents per case on sockeye and king salmon; one-half cent a case on humpback, coho, or chum salmon. License charges were also fixed for many other industries within the Territory.

In January, 1914, it was decided in the case of *Callahan v. Marshall*, 210 Fed., 230, that that por-

tion of House Bill 96 which purported to impose a poll tax upon the male persons in the territory was invalid on two grounds: First, because the designation of the United States Commissioner as the poll tax collector was invalid, since the United States Commissioner was ineligible to any other office under the government of the Territory; and second, because no poll tax could, under any of the terms of the Act be collected for the year 1913, since there was no territorial treasurer in Alaska until July 3, 1913.

#### IV.

On August 29, 1914, Congress, obviously to cure the imperfections in the Organic Act noticed by the Circuit Court of Appeals in the aforesaid case, amended the Organic Act so as to provide that nothing should prevent the Territorial Legislature from passing laws imposing additional duties upon the Governor, Commissioner and other United States officials.

#### V.

Finally, on April 29, 1915, the Territorial Legislature amended House Bill No. 96 by the passage of House Bill No. 109 (Record pp. 38-46), by which it was provided that any person, firm or corporation prosecuting or attempting to prosecute certain designated lines of business in the Territory of

Alaska should first apply for and obtain a license. For this license there was to be paid, as concerns fisheries: Salmon canneries, four cents per case on kings and reds or sockeye; two cents per case on medium reds; one cent per case on all others. That for salteries there should be paid two and one-half cents per one hundred pounds on all fish salted or mild cured, except herring; and on fish traps there should be paid one hundred dollars per annum for fixed or floating traps; for gill nets one dollar per hundred fathoms or fraction thereof.

The propositions of law involved in this controversy may be summarized as follows:

1. The Alaska Salmon Company, having complied with all the conditions and paid the license fees imposed by the said Act of Congress, is not required to apply for a license and pay the license fees and taxes imposed by the acts of the Legislature of Alaska, approved May 1, 1913, and April 29, 1915.

2. The legislative assembly was prohibited from passing any law relating to fish or fisheries in the Territory of Alaska.

3. The plaintiff in error is not liable for the alleged license charges or taxes because no assessment was made upon its property, as provided in the Organic Act.

4. The owners of private salmon hatcheries who were also engaged in the business of canning salmon in Alaska are by virtue of certificates issued to them by the Secretary of Commerce and Labor for salmon fry liberated from their said hatcheries, entitled, by virtue of such certificates to have the same applied *pro tanto*, in payment of all license fees and charges, not only those imposed by the said Acts of Congress, but also by the said Acts of the Legislature of Alaska.

Succinctly, the agreed statement of facts states (Record p. 68) the questions for decision as follows:

1. Whether or not plaintiff in error having complied with all the conditions and paid the license fees imposed by the said Acts of Congress, is obliged to apply for a license and pay the license fees and taxes imposed by the said Act of the Legislature of Alaska designated as House Bill No. 96, approved May 1, 1913.

2. Whether or not plaintiff in error, having complied with all the conditions and paid the license fees imposed by the said Acts of Congress, is obliged to apply for a license and pay the license fees and taxes imposed by the Act of the Legislature of Alaska known as House Bill No. 109, approved April 29, 1915.

3. Whether or not the owners of private salmon hatcheries, who are also engaged in the business of canning salmon in Alaska, are by virtue of certificates issued to them by the Secretary of Commerce and Labor for salmon fry liberated from their said hatcheries, entitled by virtue of such certificates to have the same applied *pro tanto* in payment of all license fees and charges, not only those imposed by the said Acts of Congress, but also by said Acts of the Legislature of Alaska.

## VI.

### **SPECIFICATIONS OF ERROR RELIED UPON.**

1. The Alaska Salmon Company, having complied with all the conditions and paid the license fees imposed by the said Act of Congress, is not required to apply for a license and pay the license fees and taxes imposed by the Acts of the Legislature of Alaska, approved May 1, 1913, and April 29, 1915.

2. The legislative assembly was prohibited from passing any law relating to fish or fisheries in the Territory of Alaska.

3. The plaintiff in error is not liable for the alleged license charged or taxes because no assessment was made upon its property, as provided in the Organic Act.

4. The owners of private salmon hatcheries who were engaged in the business of canning salmon in Alaska are by virtue of certificates issued to them by the Secretary of Commerce and Labor for salmon fry liberated from their said hatcheries, entitled by virtue of such certificates to have the same applied *pro tanto*, in payment of all license fees and charges, not only imposed by the said Acts of Congress, but also by said Acts of the Legislature of Alaska.

Succinctly, the agreed statement of facts states (Trans. p. 68) the questions for decision, and which are covered by the agreed statement of facts, as follows:

1. Whether or not plaintiff in error, having complied with all the conditions and paid the license fees imposed by the said Acts of Congress, is obliged to apply for a license and pay the license fees and taxes imposed by the said Act of the Legislature of Alaska designated as House Bill No. 96, approved May 1, 1913.

2. Whether or not plaintiff in error, having complied with all the conditions and paid the license fees imposed by the said Acts of Congress, is obliged to apply for a license and pay the license fees and taxes imposed by the Act of the Legislature of Alaska known as House Bill No. 109, approved April 29, 1915.

3. Whether or not the owners of private salmon hatcheries, who are also engaged in the

business of canning salmon in Alaska are, by virtue of certificates issued to them by the Secretary of Commerce and Labor for salmon fry liberated from their said hatcheries, entitled by virtue of such certificates, to have the same applied *pro tanto*, in payment of all license fees and charges, not only imposed by the said Acts of Congress, but also by said Acts of the Legislature of Alaska.

### ARGUMENT.

#### I.

#### GENERAL POWERS OF THE TERRITORIAL LEGISLATURE.

There can be little uncertainty concerning the nature of the territorial government since the repeated decisions of the Supreme Court upon that subject. The Territorial Legislature is a creature of Congress subject entirely to its control. That Court has said:

“that the territory is not a distinct sovereignty. It has no independent powers. It is a political community organized by Congress, all whose powers are created by Congress, and all whose acts are subject to congressional supervision. Its attitude to the general government is no more independent than that of a city to the state in which it is situated and which has given to it its municipal organization.”

*Talbot v. Silver Bow County*, 139 U. S. 438,  
at p. 446.

With these plenary powers of control, it is obvious that Congress may restrict the powers of the Territorial Legislature to such an extent as it sees fit. In other cases Congress has contented itself merely with restricting the legislative power of the Territory to any subject not inconsistent with the Constitution and laws of the United States. It placed no other express limitations of power, and such was the character of the Organic Act creating the Territory of Hawaii as construed in

*Peacock Co. v. Pratt*, 121 Fed. 772.

The terms of the Alaskan Organic Act make it plain that Congress was unwilling in this instance to confer these broad powers freed from any limitations. Alaska had been governed since 1884 directly by Congress, under the provisions of what was then called the "Organic Act" and the remote position of the Territory and the peculiar conditions there prevailing evidently influenced Congress in retaining to a very considerable extent that direct control which it exercised for so many years prior to the creation of the legislative assembly. So Congress provided by this Organic Act (Trans. p. 23):

"That all the laws of the United States heretofore passed establishing the executive and judicial departments in Alaska shall continue

in full force and effect until amended or repealed by Act of Congress; that except as herein provided all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the Legislature; Provided, that the authority herein granted to the Legislature to alter, amend, modify, and repeal laws in force in Alaska shall not extend to the customs, internal-revenue, postal or other general laws of the United States, or to the game, fish and fur-seal laws and laws relating to fur-bearing animals of the United States applicable to Alaska, or to the laws of the United States providing for taxes on business and trade, or to the Act entitled 'An Act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska, and for other purposes', approved January twenty-seventh nineteen hundred and five, and the several Acts amendatory thereof; Provided further, that this provision shall not operate to prevent the Legislature from imposing other and additional taxes and licenses. And the Legislature shall pass no law depriving the judges and officers of the District Court of Alaska of any authority, jurisdiction or function exercised by like judges or officers of District Courts of the United States."

Critically analyzing this section, it is seen that Congress has withheld from the Territorial Legis-

lature all power of legislation of any kind concerning the following four general classes of subjects:

1. The customs, internal revenue, postal or other general laws of the United States.
2. The game, fish and fur-seal laws and laws relating to fur-bearing animals.
3. The laws of the United States providing for taxes on business and trade.
4. The Act of January 27, 1905, providing for the construction and maintenance of roads, etc.

It seems necessary to first more narrowly define these four excepted classes.

The first subdivision concerning the "customs, internal revenue, postal or other general laws of the United States" requires no further definition as the subjects therein named are clearly marked out in the Revised Statutes.

The second subject, so far as it refers to fish, directly excepts the Act of June 26, 1906, which at the time of the passage of the Organic Act was the only congressional law in force for the protection and regulation of the fisheries of Alaska.

The third subdivision excepting the laws of the United States providing for taxes on business and trade is somewhat ambiguous, since there are many Congressional Acts which provide for occupation taxes. We assume, however, that this third subdivision more particularly refers to an Act as

amended June 6, 1900 (31 Stats. at Large, 331), by which any person, corporation or company prosecuting certain lines of business within the District of Alaska was required to apply for and obtain a license so to do. The lines of business therein named number some forty-two and among them is designated fisheries. They were required to pay by this Act:

For salmon canneries.....	4c per case;
salmon salteries.....	10c per barrel;
fish oil works.....	10c per barrel;
fertilizer works.....	20c per ton.

We here emphasize that the Act of June 26, 1906, providing for certain license fees and taxes upon the output of fish canneries and regulating the control of the fish industry, was subsequent in point of enactment to this Act providing for a tax on business and trades; and therefore, at the time of the passage of the Organic Act, the license fees and taxes imposed upon the salmon industry were not those provided by the trade and business Act or any other revenue measure, but by the later Act of June 26, 1906.

The fourth and last excepted legislation is the Act of June 27, 1905 (33 Stats. at Large, 616). This Act provided for a variety of subjects connected with Alaskan affairs, and particularly that

all moneys derived from the occupation or trade licenses should be deposited in the Treasury of the United States, to be expended wholly within the District of Alaska for certain purposes therein named. Thus the license fees which the salmon canneries now pay to the federal government are devoted wholly to (1) one-fourth for the establishment and maintenance of public schools in Alaska, (2) five per cent to the care and maintenance of insane persons, and (3) the residue to the construction and maintenance of wagon roads, bridges, and trails.

## II.

**THE TERRITORIAL ACTS IN IMPOSING A TAX ON THE SALMON INDUSTRY ARE INVALID BECAUSE PROHIBITED BY THE ORGANIC ACT. THE PROVISIO FOR OTHER AND ADDITIONAL TAXES AND LICENSES DOES NOT APPLY TO THE SALMON BUSINESS.**

The two acts of the Territorial Legislature under review undoubtedly "alter, amend, modify and repeal" an act of Congress then in force in Alaska, viz., the act of June 26, 1906, because that was an Act "relating to fish" which expressly provided that the payment of the license fees thereby imposed "should be in lieu of all other license fees and taxes therefor and thereon."

The trial Court, in the case of *Hoonah Packing Company v. Territory of Alaska*, Fed , held: that the second proviso in Section 3 of the Organic Act, above quoted, by which the Legislature was not prevented from "imposing other and additional taxes and licenses", operated as a repeal of that portion of the act of June 26, 1906, above quoted. It seems obvious that this is the only ground upon which the Territory can stand if the judgment below is to be affirmed and it now be held that the Legislature has the power to levy taxes upon the salmon industry in addition to those provided for by the act of June 26, 1906. It is our contention that this proviso for other and additional taxes and licenses was intended to apply to a classification of subjects other than the fishing industry, because that industry stands by itself.

The foregoing resume of Congressional enactments makes it plain that the fisheries of Alaska were first regarded merely as an industry from which revenue could be obtained, and by the act of June 6, 1900, they were classed with other industries and occupations named in the trade and business act. This theory of Congressional control prevailed for some six years; then by the Act of June 26, 1906, the salmon fisheries and the business of salmon canning were separated from other trades and occupations and placed in a class by

themselves, and since the passage of this act of 1906, Congress has dealt with the salmon industry as a business separate from other occupations.

When the Organic Act was passed, the only tax on the fishing industry was that provided by the act of June 26, 1906. As is shown by its title and its subject matter, it is a law which relates only to fish and fish products in Alaska; it contains many minute requirements concerning salmon hatcheries, the erection and maintenance of fish appliances, for closed seasons, for the discretionary powers of the Secretary of Commerce and Labor in closing streams, for labels to be used upon canned salmon, and for the making of detailed annual statements to the Secretary of Commerce and Labor, which statements are used as a basis upon which the license fees to be paid the federal government are estimated.

That portion of the Act which provides for license fees and taxes is inseparably connected with these provisions of the act. Thus the first statement is that the license taxes therein provided shall be "in lieu of all other license fees and taxes *therefor and thereon*." The word "therefor" refers to the right to carry on the business of "canning, curing or preserving fish or manufacturing fish products in the territory known as Alaska;" and the word "thereon" refers to the antecedent word "products," so that it was clearly the inten-

tion of Congress to provide that the taxes thereby levied should be exclusive of the right to further tax either the business or the product of that business. They were thus expressly made in lieu of any occupation tax and also any *ad valorem* tax.

The object and purpose of this act was the protection, regulation and encouragement of the fisheries. If those engaged in the industry would comply with the drastic regulations of the act, and thus protect the supply they were to be absolved from any other taxation. The license imposed, therefore, was not primarily a revenue measure, but a leverage to compel those who fish to foster the industry against exhaustion of supply, by protecting the fish and replenishing the waters.

Informing light upon this intention is shown by the provisions of Section 2, providing for private salmon hatcheries. This section (p. 47) states that the owners of private salmon hatcheries that have been approved by the Secretary of Commerce and Labor

"shall be exempt from all license fees and taxation of every nature at the rate of ten cases of canned salmon to every one thousand red or king salmon fry liberated."

The same section later provides (p. 48)

"that it shall be the duty of all public officials charged with the duty of collecting or receiving such license fees or taxes to accept

such certificates in lieu of money in payment of all license fees or taxes upon or against the pack of canned salmon at the ratio of one thousand fry for each ten cases of salmon."

Thus *ex industria* did the Congress signify that one of the main purposes of the act was to encourage the propagation of fish, and that every one thousand fry liberated should be an equivalent for any license fee or tax that might be levied by any governmental authority upon ten cases of salmon.

When, therefore, the Congress in the Organic Act provided that the territorial Legislature was not prevented from levying "other and additional taxes and licenses," it is submitted that it could not have intended to repeal this law of June 26, 1906, devoted to the protection and regulation of the fisheries, but, at best, the only purpose of the proviso was to refer to measures for revenue purposes only, and not to an act such as here under consideration, where the revenue is only an incident to the main purpose of the protection and propagation of fish.

The reason that Congress should thus have differentiated between the other industries which were taxed under the trade and business Act, such as abstract offices, banks, boarding-houses, etc., and the salmon fishing industry, is not far to seek. The

salmon is a deep sea fish, whose habitat is the ocean, and its presence in the rivers and streams of Alaska is for spawning purposes only. The salmon is no more to be considered the fish of Alaska than are the fur-seals that formed the subject of the arbitration between Great Britain and the United States to be considered aquatic animals of Alaska. Salmon are part of the food supply of the American people, just as are the cod on the Great Banks and the blue fish of the North Atlantic. The use of the Alaska shores and rivers is but an incident of the fishery; the object of the industry, the supply, comes from waters in no sense Alaskan. Congress, by this Act, announced its policy of endeavoring to protect this great food supply and of retaining that control with Congress. It emphatically stated that it did not desire the Territory to interfere with this control. The taxation upon the industry is inseparably connected with the other provisions concerning the protection and propagation of the fish.

Aside from the point that the salmon is a deep sea fish, which is not an Alaskan product, it may be well to notice in passing that *canned* salmon, which is the output of the salmon canneries, is by no means the sole product of Alaska. The only element of its value which is derived from Alaskan waters even, is the raw product; the tin plate and solder that go to make up the cans, the labor, the fishing appliances, all are taken into Alaska from

other places, so that the proportionate value which the raw fish have to the value of the canned product is infinitesimal.

If the Territory can now levy a tax of four cents a case on canned salmon, in addition to a like heavy tax already imposed by Congress, then it can increase this taxation from year to year. Indeed, the Act of 1913 did provide for a tax of seven cents a case upon red salmon, which in addition to the tax of four cents imposed by Congress *would have resulted in a tax of eleven cents per case upon the product*. Such taxation has the direct effect, of course, of raising the price of the food product to the public, for the canning industry is not established, nor does it exist, to supply the local wants of Alaska, but to preserve this important article of food for transportation throughout the world.

It follows that the federal license tax on the salmon canning industry is properly not found in a revenue law but in a fish law, entitled "An Act for the protection and regulation of the fisheries of Alaska"; that it is not inserted in this law merely as a revenue measure, but that it is an integral part of the entire scheme of the Act, the purpose of which is to compel the protection of the fisheries. Congress has said by this Act, to every person or company intending to engage in the salmon business in Alaska: "There are many minute regulations which you will be compelled to obey, but if you will so comply, we say to you that upon the

payment of four cents per case, you shall be relieved from all other taxation upon your business and your manufactured product". Thus, this federal license tax must be considered in conjunction with the entire Act, and that Act and every part thereof must be deemed a "fish law" which the Territorial Legislature has been expressly forbidden to alter, amend or repeal.

If, therefore, this proviso to levy other and additional license fees and taxes has operated as a repeal of that portion of the Act of June 26, 1906, providing for license fees and taxes on canned salmon, then it has also operated as a repeal of the entire Act of June 26, 1906, because these license fees and taxes when considered in connection with the hatcheries must be taken together.

It is our contention that if it had been the purpose of Congress to repeal that portion of the Act of June 26, 1906, which states that the license fees thereby imposed shall be in lieu of all other taxation, which the Congress undoubtedly has the power to do, then that such statement would have been made *directly* and by an express repeal; it would not have been done by an implied repeal through an incidental proviso. In *Minis v. United States*, 15 Pet. 423, it was said at page 445:

"\* \* \* The office of a proviso, generally, is, either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of

misinterpretation of it, as extending to cases not intended by the legislature to be brought within its purview. A general rule, applicable to all future cases, would most naturally be expected to find its proper place in some distinct and independent enactment."

Where a State law provided that the licenses thereby imposed upon insurance companies should be in lieu of all town and municipal license charges, but contained a proviso that the section should not be construed to prohibit cities having an organized fire department from levying a tax or license fee not exceeding two per cent on the gross receipts of such insurance agency, it was held that the proviso did not confer any power on a city or incorporated town, and *that it was not a grant of power.*

*City of Chicago v. Phoenix Insurance Company*, 18 N. E. 668.

Said Mr. Justice Story in *United States v. Dickson*, 15 Pet. 141, at page 165:

"\* \* \* We are led to the general rule of law, which has always prevailed, and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms. In short a pro-

viso carves special exceptions only out of the enacting clause; and those who set up any such exception, must establish it as being within the words as well as within the reasons thereof."

*Appeal of Clark*, 20 Atl. R. 456.

In *Baggaley v. Pittsburg etc. Iron Co.*, 90 Fed. 636, it is said:

"We are not unmindful that the ordinary office of a proviso is to except out of an act that which would otherwise be included. But this rule must not be carried too far. Such clauses are often introduced from excessive caution and for the purpose of preventing a possible misinterpretation of the act by including therein that which was not intended. The rule is, therefore, not one of universal obligation, and must yield to the cardinal rule which requires a court to give effect to the general intent if that can be discovered within the four corners of the act."

And in *State v. Weller*, 85 N. E. 761:

"\* \* \* The cardinal rule in the interpretation of statutes is to ascertain and give effect to the general intent of the act, if that can be discovered. Effect should be given to every word and clause, and such a construction as will make a proviso plainly repugnant to the body of the act avoided, if possible."

The amount of the license taxes to be paid by the fisheries under the Act of 1900 (the trade and

business Act) and the Act of 1906 (the fish Act) is practically identical:

*Act of June 6, 1900.*

Salmon canneries, four cents per case.

Salmon salteries, ten cents per barrel.

Fish-oil works, ten cents per barrel.

Fertilizer works, twenty cents per ton.

*Act of June 26, 1906.*

Canned salmon, four cents per case.

Pickled salmon, ten cents per barrel.

Salt salmon in bulk, five cents per 100 pounds.

Fish oil, ten cents per barrel.

Fertilizer, twenty cents per ton.

The act of 1906, Section 15 (p. 54), stated "that all acts or parts of acts inconsistent with the provisions of this act are, so far as inconsistent, hereby repealed." Thus, by the act of 1906, all provisions of the trade and business act providing for taxes on the fishing industry were expressly repealed.

When we find these license tax provisions lifted bodily out of a general revenue act and incorporated in substantial identity into an act for the protection of the fisheries, we must presume that there is some reason for such action; that Congress no longer deemed it proper that this tax should be incorporated in the general revenue measure.

It now is disposed to treat the license tax more in the nature of a penalty than for revenue. Its effect is not other than if it provided that all per-

sons engaged in salmon canning who shall propagate and liberate one thousand salmon fry, for every ten cases of salmon canned, shall be *pro tanto* released from all taxation. The tax, therefore, was a conditional one inseparably connected with other provisions by which Congress sought to encourage the establishment of hatcheries and the propagation of fish. If all these provisions have been repealed by the simple proviso that the territorial Legislature may levy other and additional taxes and licenses, then the whole purpose of the act has been taken away, and Congress has said to the Legislature, "You may not change the fish laws of Alaska directly, but you may by increasing the taxation on the salmon industry indirectly accomplish this same result. We have said to the owner of every salmon hatchery, in order to further the propagation of fish, that we will release him from the payment of taxes by accepting, in lieu of money, certificates for his fry liberated; but we now permit you to abrogate this law by imposing taxes which cannot be paid by such certificates."

The learned trial Judge in his opinion said:

"As the Organic Act (the act of 1912) is the latest expression of the legislative will on the subject, it would seem that it must be taken as repealing that part of the former act which is in conflict therewith, to wit: 'shall, in lieu of all other license fees and taxes.' "

With all due respect, it is submitted that the learned Judge has not established his premises. He has assumed a necessary conflict in order to find an implied repeal; he makes no effort to ascertain if the conflict does exist and if the two acts can be construed in harmony. Such harmony can be found by assuming that the additional license fees and taxes permitted referred to the only act which was concerned with that subject, viz., the trade and business act. We have already shown that the salmon industry is not taxed by Congress under this act or, possibly, more legitimately may we claim that this right to levy other and additional taxes must refer to other occupations than those named in the trade and business act.

It would be extraordinary if Congress in the Organic Act has said to the embryonic Legislature, "You may not alter, amend or repeal the trade and business act, but this must not be construed as preventing you from levying other and additional taxes." This is the same thing as saying, "You may not change the trade and business act, but you can change it by increasing the taxes."

What, then, did the Congress mean when it said that the territorial Legislature could not change any one of the four designated classes of laws, but that this provision should not operate to prevent the Legislature from imposing other and additional taxes and licenses? *Surely it did not mean*

*that the territorial Legislature could impose other and additional customs, internal revenue and postal taxes and licenses.* Yet if the contention of the territory here made is to be sustained, it must be held that this permission authorized the territorial Legislature to increase the charges for all or any of the four excepted classes, and the customs, internal revenue and postal laws stand *in pari materia* with the fish laws.

Nor can it mean that Congress thereby intended to repeal the fish laws of the United States applicable to Alaska, because the first proviso had distinctly stated that the territorial Legislature had no such power. Nor can it mean that the Legislature had power to change the taxes on trade and business, because the first proviso distinctly stated that it had no such power. Reading the legislative intent, as far as we may, from the acts themselves, it would seem as if the point had been made that the four exceptions named *might* prevent the territorial Legislature from levying any taxes or imposing any license charges upon a business that had not been previously taxed by Congress; that in order to prevent this the Legislature was by this second proviso not prohibited from imposing taxes and license fees upon lines of business or upon property *that were not already taxed by Congress.* It will be noted that the language used is "imposing other and additional." Thus the tax must be

both "other" and also "additional." Its evident purpose was to prevent the territorial Legislature from imposing what is, in fact, double taxation by taxing the industries which had already been taxed by Congress.

This Organic Act did not create a territorial government for Alaska; it simply created a Legislature. The other departments and instrumentalities of government continued as established by prior acts of Congress. The funds to support these other departments and instrumentalities were appropriated out of the general funds of the United States. The only means which the United States had to raise revenue from Alaska was from "taxes on business and trade."

*Binns v. United States*, 149 U. S. 486.

The expenses of the federal government to maintain those departments and agencies of government directly under its control would continue and probably increase. By this act it conferred on the territorial Legislature power to enact property tax laws (Section 9) theretofore non-existent in Alaska. Can it be wondered that Congress jealously undertook to preserve to the United States its sole source of revenue and forbade the Legislature to interfere therewith? If the Legislature had power to amend, alter or repeal these license tax laws, it could impair the revenues of the fed-

eral government derived from Alaska, or could stop them altogether and thus absolve Alaska from contributing anything to the support of these departments of government. Similarly if granted the power of imposing license taxes on lines of business already subject to the federal license tax, it could tax them out of existence and thus interfere with the federal revenue. It could also as already seen, by so doing, increase the cost of food supplies or drive out of business those engaged in the production thereof by excessive taxation.

If the proviso is to be construed as an exception to the first proviso, there can be no question that the Legislature may impose a license tax on business already subject to the federal tax. But the object sought to be attained in the previous proviso refusing to grant authority to amend, alter or modify these laws, would be so seriously weakened and impaired thereby that it is incredible that such is the intention. The reasonable interpretation would seem to be that the proviso was inserted out of excess of caution so that it could not be contended that the United States reserved to itself the sole power to impose license taxes and that the Territory could not impose such taxes on businesses not subject to the federal tax. A tax on another line of business can be as readily construed to be an "other and additional tax and license" within the meaning of the Act, as a tax superimposed on

an existing tax. The Act being open to both constructions, that should obtain which will give full effect to the manifest policy and purpose of the Act. One construction makes the second proviso in part repugnant to the first, the second makes both harmonize.

As said in *Savings Bank v. United States*, 19 Wall. 227, 236:

"The broad construction of the proviso contended for makes it plainly repugnant to the body of the act, and it is, therefore, inadmissible."

And in *Treasurer v. Clark*, 19 Vt. 129, it is said:

"But we prefer giving this portion of the statute a sensible meaning, if it will fairly bear such a construction. And we think it will. In order to do this, we have only to limit the extent of the signification of the terms used in the proviso by the general scope of the enacting clause."

The construction sought to be given the word "additional" is not strained. The Supreme Court of Oregon has so applied the word, under somewhat analogous circumstances.

The Constitution of Oregon provides that "while an amendment or amendments (to the Constitution) which shall have been agreed upon by one legislative assembly, shall be awaiting the action of

a legislative assembly or of the electors, no *additional* amendment shall be proposed".

In *Kadderly v. City of Portland*, 74 Pac. 710, the questions submitted to the Court in interpreting this section were whether it "prohibits the proposing of an amendment to the Constitution while an amendment of other or different portions of that instrument is pending", or whether "the provision quoted is to be considered as applying only to an amendment on the same subject or article as that previously proposed". The decision turned on the construction of the word "additional". The Court said (p. 717):

"\* \* \* the meaning of the Constitution is that, while an amendment or amendments agreed to by one legislative assembly shall be awaiting the action of a legislative assembly or the electors, *no additional amendment or amendments shall be proposed to any part or clause of the Constitution.*"

But even assuming that the Territorial Legislature is empowered to impose additional license taxes on businesses already subject to the federal tax, it must be admitted that that is the limit and extent of its authority to legislate in respect to otherwise prohibited subjects. It cannot be contended that in order to impose such tax, it can in

*other respects modify, alter, amend or repeal one of these laws.*

Yet the Act of June 26, 1906, provides (Sec. 2):

“that the catch and pack of salmon made  
\* \* \* by the owners of private salmon  
hatcheries \* \* \* *shall be exempt from  
all license fees and taxation of every nature*  
at the rate of ten cases of canned salmon to  
every one thousand \* \* \* fry lib-  
erated.”

As long as this clause stands, every owner of a hatchery who has liberated one thousand fry is entitled to claim exemption on ten cases from all license taxes of every nature. The territorial tax cannot be enforced thereon, unless this Act has been amended, altered or modified by limiting the operation of this clause, and making it applicable not to taxes of every nature, but only federal taxes.

It has already been shown that the Act of June 26, 1906, is not a revenue law; that the license tax provided for thereby is not for the purpose of raising revenue but to compel replenishment of the waters and is not included in the clause “laws providing for taxes on business and trades in the Act of August 24, 1900”. This clause is the last germane clause in the Act preceding the further proviso. If the proviso relates solely to this clause, and does not relate to the clause, “the game, fish

and fur-seal laws" of course the Legislature had no authority by its Act to alter or modify the Act of June 26, 1906.

From the language of the proviso, it is obvious that it was inserted only because of the presence of the clause "or to the laws of the United States providing for taxes on business and trade". That it applies solely thereto appears so obvious from the mere reading, that it seems almost unnecessary to apply a rule of construction to determine the question. But the rule as stated in *Lewis' Suth. Stat. Constr.*, Sec. 352, is that a proviso "should be construed with reference to the immediately preceding parts of the clause to which it is attached".

"The proviso \* \* \* must be construed with reference to the preceding parts of the clause to which it is appended."

*Ex parte Partington*, Q. B. 649, 653.

"In the construction of a statute, the question whether a proviso in the whole or in part relates to, and qualifies, restrains, or operates upon the immediately preceding provisions only of the statute, or whether it must be taken to extend in the whole or in part to all the preceding matters contained in the statute, must depend, I think, upon its words and import."

*King v. Newark-upon-Trent*, 3 Barn. & Cres. 59, at 71.

“Such a clause is ordinarily to be confined to the last antecedent, unless there is something in the subject matter, which requires a different construction.”

*Cushing v Worrick*, 9 Gray 382, 385.

See also

*Spring v. Collector*, 78 Ill. 101;  
*Lehigh v. Meyer*, 102 Pa. St. 479.

However, conceding that the Act of August 24, 1912, conferred generally upon the Legislature the power to impose additional taxes and licenses upon those lines of business already taxed under the provisions of the Act of March 3, 1899, still the scope and extent of this power conferred must be ascertained and determined by a consideration of the Act in its entirety. It must be construed so as to give effect to each and all of its provisions if possible. The true meaning of any clause or provision is that which best accords with the subject and general purpose of the Act in every other part.

The Act withheld from the Legislature the power to alter, amend, modify or repeal the fisheries law. It also provided that this provision “shall not operate to prevent the Legislature from imposing other and additional taxes and licenses.” The prohibition against altering or amending must be construed in connection with the provision allowing the imposition of other and additional taxes

and licenses. It was undoubtedly the purpose of Congress to continue in force in their full integrity the laws relating to fisheries and the other subjects above enumerated. The language used to effectuate this purpose was broad and comprehensive; the Legislature was forbidden to do any act that could remotely encroach upon the four forbidden subjects or the Acts of Congress relating thereto. It was commanded to withhold its hands from those subjects. Such being the manifest purpose of the Act, it can hardly be conceded that in the same Act and Section Congress would have used language that would frustrate such purpose; if it had intended to do so, it would have used clear, unmistakable and affirmative words to express that intention. Any construction of the Act which would authorize the Legislature to alter or modify the fisheries law or the other forbidden subjects would seem to frustrate the very purposes of the Act and convict Congress of gross absurdity.

“The power to alter depends upon the meaning of the word ‘alter.’ To alter is to make different without destroying identity, to vary without an entire change.”

*Barrett River Co. v. Holway*, 59 N. W. 126.

It was, therefore, the intention of Congress that the fisheries law should not be varied or changed, even in any of its details or provisions. One of the

provisions of the fisheries law of June 26, 1906, was that the licenses therein provided for shall be "in lieu of all other license fees and taxes therefor and thereon." The Act of the Legislature involved in this controversy manifestly alters the foregoing provisions; it changes the fisheries law, at least to that extent, which is in conflict with the prohibition against altering, amending or modifying the fisheries law contained in Section 3 of the Act of June 24, 1912. Yet it is a fundamental principle of statutory construction that all of the provisions of an Act must be construed so as to allow all of the provisions to stand if possible, and it would seem that from any point of view the power to impose other and additional taxes and licenses, if given, must be limited to those lines of business contained in the Act of March 3, 1899, exclusive of the provisions therein contained relating to fisheries. The imposition of other and additional licenses upon abstract companies, banks, electric light plants and other lines of business, except the fisheries, mentioned in the Act of March 3, 1889, does not involve any conflict with the prohibition against enactments by the Legislature to alter, modify or amend the provisions of the Act, for the reason that the Act of June 24, 1912, provides expressly that the imposition of other and additional taxes shall not be construed to be an alteration or modification of the Act. The imposition of addi-

tional licenses or taxes upon other lines of business except fisheries does not involve a conflict with the provision against alteration or modification of the fisheries law of June 26, 1906, neither does the imposition of such additional licenses upon such lines of business, exclusive of the fisheries, conflict with the customs, internal revenue, postal, or other general laws of the United States or the laws relating to game, fish, fur-seals, or to the Act relating to the construction and maintenance of roads. Therefore, it follows that as to all lines of business mentioned in the Act of March 3, 1899, except the fisheries, the Legislature of Alaska has a free hand to impose other and additional licenses or taxes, to any extent that it may see fit. It cannot impose other and additional licenses upon the fisheries, because such attempt directly conflicts with the fisheries law of June 24, 1906. This construction and interpretation of the Act of 1912 preserves the prohibition against the alteration of existing laws, and at the same time renders effective the proviso permitting the imposition of other and additional licenses, except as to the fisheries. In other words, the provision as to the imposition of additional licenses and taxes upon lines of business already taxed by the existing law, can be held to apply to the laws of the United States providing for taxes on business and trade, except as to the fisheries. The Legislature can impose additional taxes upon

any lines of business mentioned in that Act, except where such imposition has the effect of altering, modifying or repealing some other law of Congress relating to the four subjects above enumerated. The power of the Legislature to raise money for the support of the government of Alaska is broad and comprehensive. It embraces all lines of business mentioned in the Act of 1899, except the fisheries. The fisheries Congress reserved under its exclusive jurisdiction. All other lines of business mentioned in said Act were turned over to the Legislature for licensing and taxing without restriction or limitation.

The power to impose other and additional licenses, if limited to the other lines of business contained in the Act of March 3, 1899, exclusive of the fisheries, is in entire harmony with the provision prohibiting the Legislature from altering, amending or modifying the fisheries laws and in no event, it seems to us, can this power to impose other and additional licenses and taxes be construed to extend to the right to alter or amend the fisheries laws, but it must be limited to those lines of business defined in the act of 1899, exclusive of the fisheries.

The question here presented to the Court for decision is a narrow one. Outside of the general principles before mentioned and illustrated by leading cases, little aid can be apparently given to

the citation of authority. It is our duty to seek the legislative intent as it appears from these Congressional Acts, however darkly or gropingly such intent may have been expressed. The Territory claims that the same product may be taxed twice, once by Congress and secondly by the Territorial Legislature, and this notwithstanding that the money derived from the federal tax is devoted entirely to the needs of the Territory. (Act of January 27, 1905, 33 Stats. at Large, 616.)

Conceding, for the purpose of argument, that Congress had the power to confer upon the Legislature the right to levy additional taxes upon the same lines of business that were already taxed by Congress, nevertheless such power is so unusual and approaches so closely to the abhorrent condition of double taxation, that it should require a specific and affirmative clause to accomplish such result; it cannot follow by implication.

The Act of June 26, 1906, is the only Congressional Act relating to Alaska which states that the license charges thereby imposed shall be in lieu of all other taxes and licenses. It is obvious that this especial clause was inserted for a purpose, which was the fostering of the fish industry. We cannot *assume* that it was the intent of the Congress to encourage the salmon industry by holding out the assurance that the tax levied by Congress should be the only tax levied upon the business,

and then in the next breath state that the Territorial Legislature—the creation and subject of Congress—might levy additional taxes thereon.

It is respectfully submitted, that the only effect that can be given under well recognized rules of construction to this proviso, concerning the right to levy other and additional taxes and licenses, is to confine it either to a classification of businesses not theretofore taxed or, at best, to confine it to those lines of business which were taxed under general revenue measures, and not as is the fish industry under a special law.

### III.

**IF THE PROVISIO IN QUESTION REPEALED THE ACT OF JUNE 26, 1906, BY ELIMINATING THE PROVISION THAT THE TAXES THEREBY IMPOSED SHOULD BE IN LIEU OF ALL OTHER TAXES, THEN IT WOULD APPEAR THAT CONGRESS INTENDED TO TAKE AWAY ITS OWN POWER OF TAXATION UPON THE SALMON INDUSTRY.**

The validity of the taxes imposed by the Congressional Act is not now before this Court, and this subdivision of the argument is inserted merely for the purpose of directing attention to one phase of the inquiry; this is, that if the taxation features of the fish law have been repealed, so far as holding out the assurance that they are the only taxes, then the clause authorizing the taxes has

been repealed. Reading this Act of June 26, 1906, by its four corners, it is made clear that all of the other provisions of the Act, imposing duties and regulations upon those engaged in the salmon industry, are counter-balanced by the statement from the government that the industry shall not be taxed excepting as Congress has stated. Many new salmon canning establishments have been started in Alaska during the ten years since the passage of this fish law, and under its assurance. It is reasonable to suppose that if Congress desired to change the amount of taxation, that consideration would also be given to the other features of the fish bill which imposed duties upon the salmon operators. If the government had intended to withdraw the assurance which it held out, it may well be supposed that it would relax some of the regulations that it imposed.

The withholding from the Territorial Legislature of any power to in anywise change the laws relating to salmon, makes it clear, of course, that Congress intended to retain the direct and full control and regulative power over that industry. The territory has not attempted to make any regulations concerning the salmon industry or exercise any governmental control over it; this remains with Congress. It therefore will be a singular situation if the Territory can now exact payment of heavy taxes from an industry over which it furnishes no pro-

tection. The Territory of Alaska is subjected to no expense whatever in connection with the supervision of the salmon industry; all of this expense is borne by Congress through the Bureau of Fisheries. This suggestion we make to show that it could not have been the intention of Congress that it should bear all the expense connected with the governmental control of this great industry and permit the Territory to nevertheless exact large governmental charges therefrom. If there had been any thought that the Territory might impose taxes upon the industry in addition to those already imposed by Congress, then assuredly there would have been some division of the governmental expense connected with such industry.

#### IV.

#### **THE LEGISLATIVE ACTS ARE INVALID BECAUSE CONTRARY TO THE FIRST PROVISION OF SECTION 9 OF THE ORGANIC ACT.**

This Section 9 (pp. 27-28) begins by stating "The legislative power of the Territory shall extend to all rightful subjects of legislation, but not inconsistent with the Constitution and laws of the United States". A tax upon the salmon industry by the Legislature in addition to a similar tax already imposed by Congress is "inconsistent" with a law of the United States, viz., the Act of June 26, 1906.

For reasons already stated, these taxes imposed by the Territorial Legislature are inconsistent with the spirit and purpose of the Act of June 26, 1906. It would be an anomalous situation if Congress intended to impose a tax under the Act of June 26, 1906, which states directly that such tax shall be in lieu of all other taxes, pay over the entire proceeds of such tax to the Territory and then that a Territorial Act would be "consistent" which proceeded to again tax the same product.

## V.

### **THE ACTS OF THE TERRITORIAL LEGISLATURE IN IMPOSING TAXES ON THE OUTPUT OF SALMON CANNERIES AND THEIR APPLIANCES ARE INVALID BECAUSE IN VIOLATION OF SECTION 9 OF THE ORGANIC ACT.**

Section 9 of the Organic Act (pp. 27-28) provides (p. 30):

"\* \* \* all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the actual value thereof. No tax shall be levied for Territorial purposes in excess of one per centum upon the assessed valuation of property therein in any one year."

The Territorial Act is entitled: "An Act to establish a system of taxation, create revenue, and pro-

vide for collection thereof, for the Territory of Alaska, and for other purposes" (p. 38), and Section 5 of this Territorial Act provides (pp. 44-45):

"All taxes levied, laid or provided for in this Act and penalties and interest accrued, are hereby declared to be a lien upon the real and personal property of the person, firm or corporation liable therefor, paramount and superior to all mortgages, hypothecations, conveyances and assignments."

It is manifest that this measure is for revenue purposes and is not levied under the police power. This was directly decided in a case which went to the United States Supreme Court from this Court. *Flanigan v. Sierra County*, 196 U. S. 552. No attempt has been made to base the tax upon the output of salmon canneries or their appliances upon any assessed valuation; nor is there any evidence here that the total tax imposed does not exceed one per cent of the assessed valuation.

The question here presented is of momentous importance, not only to the citizens of Alaska, but also to all the people of this country. This question, in brief, is, Can the uniformity clause be set aside in every case by levying a tax under the guise of an occupation or business tax? May the farmer instead of being taxed upon an *ad valorem* basis for his acreage be taxed for carrying on the occupation of a farmer at so much per acre? May the miner

be taxed for carrying on the business of mining at so much per ton of output?

It will not be denied that occupation taxes in general are not subject to the uniformity clause. The question here presented goes further; it in practical effect is, May *all* taxes be changed from the form to which we have become accustomed and called occupation taxes?

The importance of the questions involved in this case can hardly be exaggerated. If the decision of the Circuit Court of Appeals is to be upheld by this Court then the power of the federal government over the fisheries of Alaska will be greatly impaired, if not completely destroyed. The power to tax the instrumentalities selected by the federal government to carry on its business may become wholly inefficient, if not totally destroyed. A consideration of the statutes involved in this action we think will show beyond question that Congress was unwilling to entrust to the Territorial Legislature of Alaska dominion and control over the fisheries of Alaska. It reserved this dominion and control unto itself. And yet, under the decision of the Circuit Court of Appeals in this case, the Territory of Alaska is deemed to have the power to impose any additional taxes on the output of salmon that it may see fit. It may impose, and, as the petitioner contends, has already imposed taxes that greatly impair the successful carrying on of

the fishing business of Alaska. The decision of the lower Court holds that any tax, no matter how great, within the discretion of the Legislature of Alaska may be imposed upon this industry.

It is evident that this power, if exercised by the Legislature may completely destroy the fishing industry of Alaska and thwart the very purpose Congress had in view in prohibiting the Legislature from passing any laws with reference to the fishing industry.

Congress reserved the power to control the fisheries. The Legislature may destroy that power. Could it have been the intention of Congress to vest in the Legislature the power to destroy that which Congress said it retained under its own dominion? The Act of the Legislature of Alaska is repugnant to the Act of Congress, and we think the principles announced by this Court in the case of *McCulloch v. Maryland*, 4th Wheat. 316, are peculiarly applicable.

Respectfully submitted,

WARREN GREGORY,

E. S. McCORD,

W. H. BOGLE,

*Attorneys for Plaintiff in Error.*

In the  
Supreme Court of the United States

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No. 996.

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ALASKA SALMON COMPANY  
A Corporation,  
Plaintiff in Error,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error.

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*MOTION TO DISMISS WRIT OF ERROR.*

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In Error to the United States Circuit Court of  
Appeals for the Ninth Circuit.

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GEORGE B. GRIGSBY,  
Attorney General for the  
Territory of Alaska.

In the  
Supreme Court of the United States

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No. 996.

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ALASKA SALMON COMPANY  
A Corporation,  
Plaintiff in Error,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error.

---

*MOTION TO DISMISS WRIT OF ERROR.*

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Now comes the Defendant in Error, the Territory of Alaska, by George B. Grigsby, Attorney General, and moves this court to dismiss the writ of error herein for want of jurisdiction.

This motion is based upon all the records and files herein, and upon the grounds stated in the annexed brief and argument.

GEORGE B. GRIGSBY,  
Attorney General for the  
Territory of Alaska.

IN THE SUPREME COURT OF THE  
UNITED STATES.

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No. 996.

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ALASKA SALMON COMPANY  
A Corporation,  
Plaintiff in Error,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error.

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*STATEMENT OF THE CASE.*

This is an action originally brought by the Territory of Alaska to recover taxes claimed to be due from the plaintiff in error under an act of the Territorial Legislature of the Territory of Alaska. The case was brought originally in the United States District Court for the District of Alaska, First Division. Judgment was rendered in said court in favor of the Territory, and thereupon a writ of error was sued out to the Circuit Court of Appeals for the Ninth Circuit. The judgment

of the lower court was affirmed by the Circuit Court of Appeals. Thereafter a petition for a writ of certiorari was filed in the Supreme Court by the plaintiff in error, which has been denied. Subsequently and within the time allowed by law a writ of error was sued out to this court.

The defendant in error contends that the judgment of the Circuit Court of Appeals is final herein and that this court is therefore without jurisdiction.

### *BRIEF AND ARGUMENT.*

The law defining the appellate jurisdiction of the Circuit Court of Appeals over cases arising in Alaska is set forth in section 134 of the Judicial Code of the United States (36 Stat. L. 1134) as follows:

"Sec. 134. In all cases other than those in which a writ of error or appeal will lie direct to the Supreme Court of the United States as provided in section two hundred and forty-seven, in which the amount involved or the value of the subject-matter in controversy shall exceed five hundred dollars, and in all criminal cases, writs of error and appeals shall lie from the district court for Alaska or from any division thereof, to the circuit court of appeals for the ninth circuit, and the judgments, orders, and decrees of said court shall be final in all such cases. But whenever such circuit court of appeals

may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in any such case, the court may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the question or proposition certified to it, and its instructions shall be binding upon the circuit court of appeals."

Section 247 of the Judicial Code (36 Stat. 1, 1158) provides for the taking of appeals and writs of error from the District Courts of Alaska direct to the Supreme Court, as follows:

"Sec. 247. Appeals and writs of error may be taken and prosecuted from the final judgments and decrees of the district court for the district of Alaska or for any division thereof, direct to the Supreme Court of the United States, in the following cases: In prize cases; and in all cases which involve the construction or application of the Constitution of the United States, or in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question, or in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States. Such writs, of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the District Courts to the Supreme Court."

If this court has jurisdiction at all in the premises it is under section 241 of the Judicial Code of the United States (36 Stat. L. 1157) which is as follows:

"Sec. 241. In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs."

Since the judgment of the Circuit Court of Appeals in this case is made final by the express terms of section 134 above quoted, it follows that this court is without jurisdiction. No constitutional questions were raised either by the pleadings or in the subsequent proceedings of the case in the trial court (see Assignment of Errors, Transcript of Record, page 100). Even had such constitutional questions been raised, we believe the finality of the judgment of the Circuit Court of Appeals would not have been affected. No such questions having been raised, however, no argument is necessary to sustain the proposition that this court is without jurisdiction.

GEORGE B. GRIGSBY,

Attorney General for the  
Territory of Alaska.

IN THE SUPREME COURT OF THE  
UNITED STATES.

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No. 996.

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ALASKA SALMON COMPANY  
a corporation,

Plaintiff in Error,

vs.

THE TERRITORY OF ALASKA,  
Defendant in Error.

} *NOTICE*

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To the Alaska Salmon Company, a corporation,  
plaintiff in error, and to Warren Gregory,  
George N. Whipple and E. S. McCord, its  
counsel:

You are hereby notified that the Territory of  
Alaska, the defendant in error herein, will submit  
to the Supreme Court of the United States, on Mon-  
day, the.....day of February,  
1918, at the opening of the court on that day, or  
as soon thereafter as counsel can be heard, the mo-  
tion of which the foregoing is a copy, and that said

motion will be submitted upon all the records and files herein, and upon the foregoing statement of facts and brief and argument.

GEORGE B. GRIGSBY,  
Attorney General for the  
Territory of Alaska.

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Service of the foregoing notice, motion, brief and argument is hereby accepted and acknowledged this ..... day of January, 1918.

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Counsel for plaintiff in error.

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ALASKA SALMON COMPANY *v.* TERRITORY OF  
ALASKA.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT.

No. 151. Argued January 20, 1919.—Decided March 3, 1919.

Decided on the authority of *Alaska Pacific Fisheries v. Alaska*, ante, 53.  
Writ of error to review 236 Fed. Rep. 62, dismissed.

The case is stated in the opinion.

*Mr. Warren Gregory*, *Mr. E. S. McCord* and *Mr. W. H. Bogle*, for plaintiff in error, submitted.

*Mr. George B. Grigsby*, Attorney General of the Territory of Alaska, for defendant in error.

Memorandum by direction of the court, by MR. JUSTICE DAY.

This action was brought in the District Court of Alaska by the Territory of Alaska to recover license taxes from the Alaska Salmon Company. Judgment was rendered

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## Syllabus.

in the District Court in favor of the Territory. To review that judgment a writ of error was taken from the Circuit Court of Appeals for the Ninth Circuit. The Circuit Court of Appeals affirmed the judgment of the District Court. 236 Fed. Rep. 62. A petition for a rehearing was filed, and denied. Petition for writ of certiorari to the Circuit Court of Appeals was denied in this court. 242 U. S. 648.

The writ of error must be dismissed. The judgment of the Circuit Court of Appeals for the Ninth Circuit was final for the reasons set forth in Nos. 117 and 118, just decided, *ante*, 53.

*Dismissed.*

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